(2)

91-625



No.

# In the Supreme Court of the United States

OCTOBER TERM, 1991

E-V Company, a Partnership Composed of
Emil F. Kehr and Vincent E. Malone, and
Keller Office Equipment Company,
*Petitioners,*

v.

Urban Redevelopment Authority of Pittsburgh,
*Respondent.*

## Petition For A Writ Of Certiorari To The Supreme Court Of Pennsylvania

## Appendix To Petition For A Writ Of Certiorari

THOMAS J. DEMPSEY
*Counsel of Record for Petitioners*
820 Frick Building
Pittsburgh, PA 15219
(412) 281-2442

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**Appendix A**

**[J-146-1990]**

**IN THE SUPREME COURT OF PENNSYLVANIA**
**WESTERN DISTRICT**

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| IN THE MATTER OF: CONDEMNATION BY THE URBAN REDEVELOPMENT AUTHORITY OF PITTSBURGH OF CERTAIN LAND IN THE TWENTY-SECOND AND TWENTY-THIRD WARDS OF THE CITY OF PITTSBURGH, ALLEGHENY COUNTY, PENNSYLVANIA REDEVELOPMENT AREA NO. 39 (NORTH SHORE), BEING PROPERTY OF:<br><br>E-V COMPANY, a partnership composed of Emil F. Kehr and Vincent E. Malone, or any other persons found to have an interest in the property,<br><br>KELLER OFFICE EQUIPMENT COMPANY,<br><br>PITTSBURGH HARLEY DAVIDSON, INC., formerly ALLEGHENY COUNTY DISTRIBUTORS, INC., a Pennsylvania corporation, or any other person found to have an interest in the property<br><br>APPEAL OF: E-V COMPANY, a partnership composed of Emil F. Kehr and Vincent E. Malone, or any other persons found to have an interest in the property, and KELLER OFFICE EQUIPMENT COMPANY | No. 45 W.D.<br>Appeal Docket 1989<br><br>Appeal from the Order of the Commonwealth Court, entered on July 8, 1988, at No. 821 C.D. 1986, affirming the Order of the Court of Common Pleas of Allegheny County, Civil Division, entered on February 21, 1986, at G.D. No. 81-27642<br><br>117 Pa. Commw. Ct. 475, 544 A.2d 87 (1988)<br><br>ARGUED:<br>September 24, 1990<br>RESUBMITTED:<br>January 11, 1991 |

## OPINION

**JUSTICE ZAPPALA** FILED: JULY 12, 1991

E-V Company and Keller Office Equipment Company (hereinafter condemnees) filed preliminary objections to a declaration of taking filed on October 9, 1981, by the Urban Redevelopment Authority of Pittsburgh (URA). Allegheny County Common Pleas Court overruled the objections and Commonwealth Court affirmed. We granted their petition for allowance of appeal limited to the questions: 1) "whether the condemnees have been unconstitutionally denied a meaningful hearing at a meaningful time to challenge the certification of blight...." and 2) "whether the taking is invalid for failure of the certification of blight process to comply with the requirements of the Local Agency Law." Put another way, the question before the Court is whether the Local Agency Law, or the Constitution, require a planning commission to notify property owners and hold hearings before determining that an area is appropriate for redevelopment according to the Urban Redevelopment Law, Act of May 24, 1945, P.L. 991, 35 P.S. §1701 et seq.

The Urban Redevelopment Law, 35 P.S. §1702(a), declares as a matter of legislative findings and policy that urban areas may become blighted because of: (1) unsafe, unsanitary, inadequate or over-crowded conditions of the dwellings in the particular area; (2) inadequate planning of the area; (3) excessive land coverage by the buildings in the area; (4) lack of proper light and air and open space; (5) the defective design and arrangement of the buildings in the area; (6) faulty street or lot layout; or (7) land uses in the area which are economically or socially undesirable. It further provides:

> (c) That the foregoing conditions are beyond remedy or control by regulatory processes in certain blighted areas, or portions thereof, and cannot be effectively dealt with by private enterprise under existing law without the additional aids herein granted and that such conditions exist chiefly in areas which are so subdivided into small parcels and in divided ownerships that their assembly for purposes of clearance, replanning and redevelopment is difficult and impossible without the effective public power of eminent domain.

35 P.S. §1702(c). When a planning commission certifies an area as a redevelopment area according to the foregoing standards, the redevelopment authority is empowered to prepare a plan for redeveloping that area for submission to the governing body. If the plan is approved, the authority or its agent may then proceed to implement the plan, including taking of property within the area by eminent domain.

On December 18, 1964, pursuant to a Basic Conditions Report[1], the Planning Commission of the City of Pittsburgh certified an area containing 203 acres located on the North Side of Pittsburgh as blighted within the meaning of the Urban Redevelopment Law. At that time, the area certified as blighted was called, for project purposes,

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[1]A Basic Conditions Report was defined by witness William B. Waddell (community planner with the City of Pittsburgh Planning Department, 1970-80) as "a report on the basic conditions of an area." (R.Rec. 1307a) Mr. Waddell explained that there are three sections to a Basic Conditions Report: First "is the basic conditions as they're recorded in line with a certain format of what the conditions are in an area." Second "is taking these conditions and analyzing them in relation to the seven conditions of blight as defined in the redevelopment law." Third "is . . . the recommendation based on that analysis of the redevelopment law." (R.Rec. 1307a)

the "Federal Anderson" area. Included in the "Federal Anderson" area were, among many others, properties located on Isabella Street in a block between the Sixth Street Bridge and Federal Street on the West and the Seventh Street Bridge and Sandusky Street on the East. After the Planning Commission certified the "Federal Anderson" area as blighted, no further action of any kind was taken by the Planning Commission or the URA with respect to the project.

On October 4, 1971, the City Planning Commission met and certified as blighted 90.8 acres located in the North Side of Pittsburgh. Approximately 63 of those acres were part of the 203 acres which previously had been certified as blighted in 1964. The revised 90.8 acres project was referred to as the "North Shore Project" area. Included among the 63 acres that was "recertified" as blighted were the Isabella Street properties between Federal Street and Sandusky Street which had been a part of the area certified as blighted in 1964.

Pursuant to 35 P.S. §1710 (a)-(c), the URA then prepared a redevelopment proposal for the North Shore project area. The proposal showed in detail the proposed method for redevelopment of the area, listed properties to be acquired during the first year of the project, and indicated that rehabilitation was to be a significant part of the redevelopment, mostly as private action with technical assistance provided by the URA. The proposal also provided that "Property will be acquired and cleared to: . . . provide developable parcels for redevelopment."

This redevelopment proposal was submitted to the Pittsburgh City Council, which held a public hearing on the proposal on April 12, 1972. The proposal was

approved by City Council on May 5, 1972, and the URA commenced implementing the proposal, over the next several years, acquiring and demolishing properties, applying for federal and state funds, and submitting modifications to the proposal.

The property on Isabella Street owned by the condemnee E-V Company, which is leased by condemnee Keller Office Equipment Company for the operation of its business, was included in the 203 acres certified as blighted in 1964 and in the 90.8 acres certified as blighted in 1971. That Isabella Street property included a four story building known as 32 Isabella Street, an eight story building known as 36 Isabella Street, and a two story building known as 38 Isabella Street. When E-V Company purchased the property in 1977, Keller Office Equipment Company moved from the four story building (32 Isabella Street) to the eight story building (36 Isabella Street). Eventually, in March of 1980 E-V Company sold the four story building. Later, in February, 1981, the two story building was sold. After the condemnee E-V Company had purchased the real estate and buildings in 1977, E-V Company continued to invest money in the property by remodeling the eight story building.

On October 9, 1981, the URA exercised the power of eminent domain and filed a declaration of taking in the Court of Common Pleas of Allegheny County, Pennsylvania, appropriating the properties located on Isabella Street in the North Shore project area, including the property of condemnee E-V Company which property housed the business of condemnee Keller Office Equipment Company at 36 Isabella Street. As stated, preliminary objections were filed. When the case was called for trial, it was ordered to

be tried by depositions. In due course various witnesses were subpoenaed and deposed and various documents were produced. Following the taking of depositions, the court filed an Adjudication and Order on February 21, 1986, denying appellants' preliminary objections. On appeal, the Commonwealth Court concluded that the trial court neither abused its discretion nor committed an error of law and, therefore, affirmed the order overruling the preliminary objections. We granted allowance of appeal, limited to the two questions set out above.

Treating the statutory issue first, the appellants argue that the taking of their property by eminent domain is invalid because the process by which the public purpose for the taking was established, the certification of blight, did not conform to the requirements of the Local Agency Law, originally enacted as the Act of December 2, 1968, P.L. 113, 53 P.S. §11301, effective January 1, 1969, now found at 2 Pa.C.S. §§101 and 102, Chapter 5, Subchapter B, and Chapter 7, Subchapter B. That Law provides that "[n]o adjudication of a local agency shall be valid as to any party unless he shall have been afforded reasonable notice of a hearing and an opportunity to be heard." 2 Pa.C.S. §553. An adjudication is defined as "any final order, decree, decision, determination or ruling by an agency affecting personal or property rights, privileges, immunities, duties, liabilities or obligations of any or all parties to the proceeding in which the adjudication is made." 2 Pa.C.S. §101.

The Commonwealth Court has held that a planning commission's certification of blight is not an adjudication under Section 553 of the Local Agency Law, *Cass Plumbing & Heating Company v. PPG Industries, Inc.*, 52 Pa.

Commw. 600, 416 A.2d 1142 (1980). The appellants urge the adoption of the view set out in Judge Blatt's dissenting opinion in *Cass Plumbing*, that the action of certifying an area as blighted must be considered an adjudication because it exposes landowners to eminent domain and other powers of redevelopment authorities, which they would not have been exposed to otherwise.

We are of the view that a certification of blight does not, in and of itself, have a *legal* effect on property rights. It must be emphasized that a certification of blight does not necessarily lead to the taking of all, or even any, of the property in the certified area by eminent domain. The Urban Redevelopment Law recognizes "[t]hat certain blighted areas, or portions thereof, may require total acquisition, clearance and disposition . . . and that other blighted areas, or portions thereof, . . . may be susceptible to rehabilitation or conservation or a combination of clearance and disposition and rehabilitation or conservation . . . ." 35 P.S. §1702(c.1). Among the specific powers given to redevelopment authorities is the power "to initiate preliminary studies of possible redevelopment areas to make and assist in implementing (1) plans for carrying out a program of voluntary repair, rehabilitation and conservation of real property, buildings and improvements, [and] (2) plans for the enforcement of laws, codes and regulations relating to the use of land and the use and occupancy of buildings and improvements . . . ." 35 P.S. §1709(b). Indeed, the Law has recently been amended to explicitly give redevelopment authorities the power "[t]o make, directly or indirectly, secured or unsecured loans" and "[t]o make loans to or deposits with, . . . without requiring collateral security therefor, any financial institution" to

finance, among other things, rehabilitation of a redevelopment program. 35 P.S. §§1709(aa),(bb), as amended March 30, 1988, P.L. 304, No. 39. Thus, the mere designation of a redevelopment area does not inevitably lead to acquisition by eminent domain.[2]

Of equal significance to our finding that the certification itself does not affect property rights is the fact that the certification merely sets the stage for redevelopment of the area. The redevelopment authority must thereafter devise a plan and submit a detailed proposal to the governing body of the municipality. Only after the governing body has held public hearings and given its approval to the plan can the redevelopment authority take any action that affects property rights in the area. The planning commission's designation of a redevelopment area is thus seen as a preliminary or advisory matter.

The appellants also argue from evidence introduced by way of expert testimony that a certification of blight "affects property rights," and thus is an adjudication, because when it becomes public knowledge that an area has been certified as blighted, deleterious consequences befall landowners and business owners in that area. The testimony was to the effect that real estate, as well as equipment, machinery and fixtures situated are no longer readily saleable on the open market; it is difficult for property owners to obtain mortgages or other loans secured by real estate within the area certified as blighted; business and

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[2]In fact, the redevelopment proposal in the present case specifically declared that "rehabilitation is a significant part of the proposed redevelopment," and "for the most part, rehabilitation will be carried out as a program of private action." Unfortunately for the appellants, their particular piece of property was not one that could be rehabilitated consistent with the redevelopment program for the area.

residential tenants alike have a tendency to move from the area as soon as possible, often before the end of their lease terms, resulting in vacant and boarded-up buildings; and maintenance and repair of the structures within the area are usually neglected by the property owners, further affecting the real estate in a negative way.

Whatever the validity of this evidence, which was not referred to, much less credited, by the court in its findings of fact, it demonstrates only that property *interests may* be affected by subjective reactions to the certification. It does not establish that the legal *rights are* affected by the certification itself. Indeed, the experience of the parties to this action belies the claim they advance, for they asserted that following the initial certification of blight in 1964, and again following the 1971 certification, buildings were demolished, there was new construction, properties were bought and sold, and buildings were rehabilitated.[3] Although the appellants attempt to negate this fact by arguing that the expert's assessment applies only where a certification of blight is *generally known*, this reinforces the conclusion that the deleterious effects flow not from the certification itself but from speculative subjective reactions to it.

Our analysis of the appellants' constitutional argument follows a similar course. The appellants rely on *Armstrong v. Manzo*, 380 U.S. 545 (1965), as setting out the applicable interpretation of the due process guarantees—

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[3]If in fact the publicity surrounding a certification of blight has such a drastic effect on the property, and it appears inevitable at that early stage that the property will be condemned, the property owner has resort to the established law of de facto taking to remedy the loss. See *Conroy-Prugh Glass Co. vs. Commonwealth*, 456 Pa. 384, 321 A.2d 598 (1974).

that persons may not be deprived of their rights or property without a meaningful opportunity to be heard at a meaningful time, and that proceedings in which the burden of proof has been shifted are inadequate to protect the interests guarded by the due process clauses.[4]

The appellants argue that preliminary objections to a declaration of taking do not offer a meaningful opportunity to be heard at a meaningful time on the propriety of the certification of blight, especially in these circumstances, where nine and a half years passed between the certification and the declaration of taking of their property. They further argue that the ability to file preliminary objections is inadequate to cure the due process deprivation caused by lack of a hearing, since condemnees bear a heavy burden of proving fraud or abuse of discretion by the condemning body, which burden, it is suggested, they would

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[4]In that case, a step-father and his wife petitioned for the adoption of a child born of the wife and her previous husband. The petitioners alleged that the consent of the natural father was not necessary because he had failed to contribute to the support of the child for more than two years. The previous husband was not notified, and did not have the 'slightest inkling,' of the pending adoption proceedings. After the adoption had been approved, the natural father learned of the action and promptly filed a motion to set aside the adoption decree. The Texas courts recognized that the natural father was entitled to due process, but held that the failure to give him notice and an opportunity to be heard prior to the adoption had been cured by the hearing he received upon his motion to set aside the adoption. The Supreme Court reversed, reasoning that if the natural father had been given the timely notice to which he was entitled, the step-father and his wife (the child's mother), as the moving parties, would have had the burden of proof at any contested proceeding. After a decree of adoption had been entered, the natural father was faced with the affirmative burden of overcoming that adverse decree by one judge based upon a finding of nonsupport made by another judge.

not have borne at an earlier hearing. We cannot agree with this agrument in either respect.

The appellants suggest that planning commissions must hold public hearings to consider whether to certify an area for redevelopment, and that at such hearings the commission would have the burden of proving that the conditions necessary for invoking the Redevelopment Law existed. Such is clearly not the scheme provided in the Law itself, and the constitutional guarantees of due process cannot be stretched to hold that it is constitutionally required. As detailed above, we view the decision of the commission to designate an area for redevelopment as one that does not itself affect property rights. It is an internal decision made by a government body presumed to perform its duties in good faith and according to law. Planning commissions, like other government agencies are not required to conduct their decision-making process according to an adversarial model, bearing a burden of "proving" that their proposed actions conforms to the power delegated to them by their enabling legislation.

A comparison between the redevelopment process and the process for planning and building a new highway is instructive. The Department of Transportation is authorized to prepare and continually revise a "twelve year program" for construction and improvement of transportation systems. 71 P.S. §512(a)(13). Depending upon priorities and funding, the proposals included in such program may or may not be undertaken. Once a project has proceeded to the stage where a preliminary plan or design has been submitted that will require the acquisition of new or additional right-of-way, the Department is required to hold public hearings and consider the effects of the project

on a host of concerns. 71 P.S. §512(b) (1)-(23). Statutory newspaper notice of such hearings is sufficient, *In re Condemnation by Commonwealth Department of Transportation of Right of Way for Legislative Route 201, Section 5 R/W*, 22 Pa. Commw. 440, 349, A.2d 819 (1976). The Department is also required to make written findings that the project will not adversely affect those concerns or that there is no feasible and prudent alternative to such effects. *Id.* Persons aggrieved by any of the Department's findings in this regard may appeal to the Commonwealth Court, 71 P.S. §512(e), which reviews the actions of the Department under the "abuse of discretion" standard, *Snelling v. Department of Transportation*, 27 Pa. Commw. 276, 366 A.2d 1298 (1976).

Similarly, the Redevelopment Law provides for designation of areas in need of redevelopment as a first step, to be followed by preparation of detailed proposals for redevelopment, 35 P.S. §1710(a)-(c), submission of the proposals to the planning commission for recommendations, 35 P.S. §1710(e), and submission of the proposals and planning commission recommendations to the governing body for approval. Before deciding to approve or reject the proposal, the governing body is required to hold public hearings on the redevelopment proposal and give notice of such hearings by newspaper publication, 35 P.S. §1710(g).

Although the Redevelopment Law does not specifically provide for an appeal for persons aggrieved by a governing body's decision to accept a redevelopment proposal, this Court has held that an action will lie in equity to challenge a certification of blight. In *Crawford v. Redevelopment Authority*, 418 Pa. 549, 211 A.2d 866 (1965), the planning commission had certified a designated area as

being in need of redevelopment and had approved a proposal prepared by the redevelopment authority, which, after public hearings, was adopted by the city council and county commisssioners. The first issue the Court considered was "the propriety of an attack in equity of a Redevelopment Authority Certification that an area is blighted." *Id.*, at 553, 211 A.2d at . The ready answer was that "[w]e have long held that such an attack is proper when it is alleged and proven that the Authority, in making its certification, acted in bad faith, arbitrarily, or failed to follow a statutory requirement." *Id.*, citing *Oliver v. Clairton*, 374 Pa. 333, 98 A.2d 47 (1953). We emphasized, however, the limited scope of judicial review, stating that an authority's exercise of its discretion should not be disturbed "in the absence of fraud or palpable bad faith." *Id.*

Since a finding of blight is but the first step in a process that could have any number of effects, positive as well as negative, on the area and the individual properties within it, it does no more to "expose property to the powers of eminent domain" than does a highway department's preliminary plan to locate a highway in a given area.[5] The requirement that the governing body hold public hearings and give notice of those hearings by publication, prior to formal adoption of a proposal for redevelopment, is sufficient to satisfy the due process requirement that those affected have an opportunity to voice their objections. As noted, an action is available in equity for those aggrieved to challenge the certification until declarations of taking have been filed, at which point the same issue may be

[5]Indeed, in this sense it may be said that *all* property is "exposed to the power of eminent domain", Pa. Const. Art. 1, Sec. 10, subject only to the limitation that the government agency exercising that power must not do so arbitrarily or in bad faith.

litigated by way of preliminary objections to the taking. And since those objecting to the certification are required in any case to bear the heavy burden of overcoming the presumption that the authority performed its duties in good faith and according to law, the argument based on *Armstrong v. Manzo*, that preliminary objections to a declaration of taking are an inadequate cure because they shift the burden of proof, must fail. There is no deprivation to cure and the burden does not shift.

Because we find the procedures set out in the Redevelopment Law, the Eminent Domain Code, and the case law adequate under the Due Process Clause and the Local Agency Law to protect property interests at the initial stage of the redevelopment process where an area is certified as a redevelopment area, we affirm the Order of the Commonwealth Court.

Mr. Justice Larsen files a Dissenting Opinion in which Mr. Justice Papadakos joins.

Mr. Justice Flaherty files a Dissenting Opinion in which Mr. Justice Papadakos joins.

[J-146-1990]

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

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| IN THE MATTER OF: CONDEMNATION BY URBAN REDEVELOPMENT AUTHORITY OF PITTSBURGH OF CERTAIN LAND IN THE TWENTY-SECOND AND TWENTY-THIRD WARDS OF THE CITY OF PITTSBURGH, ALLEGHENY COUNTY, PENNSYLVANIA, REVEDELOPMENT AREA NO. 39 (NORTH SHORE), BEING PROPERTY OF:<br><br>E-V COMPANY, a partnership composed of Emil F. Kehr and Vincent E. Malone or any other persons found to have an interest in the property<br><br>KELLER OFFICE EQUIPMENT COMPANY,<br><br>PITTSBURGH HARLEY DAVIDSON, INC., formerly ALLEGHENY COUNTY DISTRIBUTORS, INC., a Pennsylvania corporation, or any other person found to have an interest in the property.<br><br>APPEAL OF E-V COMPANY, a partnership composed of Emil F. Kehr and Vincent E. Malone, or any other persons found to have an interest in the property, and KELLER OFFICE EQUIPMENT COMPANY. | No. 45 W. D. Appeal Docket 1989<br><br>Appeal from the order of the Commonwealth Court entered on July 8, 1988 at No. 821 C. D. 1986 affirming the Court of Common Pleas of Allegheny County, Civil Division Order of February 21, 1986 at G. D. No. 81-27642<br><br>117 Pa. Commw. Ct. 475, 544 A.2d 87 (1988)<br><br>ARGUED<br>Sept. 24, 1990<br>RESUBMITTED:<br>January 11, 1991 |

## DISSENTING OPINION

**JUSTICE ROLF LARSEN** FILED: JULY 12, 1991

I dissent.

The issues presented in this appeal are: (1) whether the appellants-condemnees, E-V Company and Keller Office Equipment Company, (hereinafter condemnees) have been unconstitutionally denied a meaningful hearing at a meaningful time to challenge the certification of blight which had exposed them to a condemnation proceeding, and (2) whether the taking is invalid for the failure of the certification of blight process to comply with the requirements of the Local Agency Law.

On December 18, 1964, the Planning Commission of the City of Pittsburgh certified an area incorporating 203 acres situated on the North Side of Pittsburgh as a blighted area within the meaning of the Urban Redevelopment Law, Act of May 24, 1945, P.L. 991, 35 P.S. §1701, et seq. The area certified as a blighted area in 1964 was referred to as the "Federal Anderson" area. Part of the 203 acres known as the "Federal Anderson" area were properties located on Isabella Street in the city block between the Sixth Street Bridge and Federal Street on the West and the Seventh Street Bridge and Sandusky Street on the East. The condemnees' property and business are located in that block.

The record indicates that no notice of the meeting of the Planning Commission that was held on December 18, 1964, was given, by personal service, newspaper advertisements, posting or otherwise, to any of the property owners, residents, tenants, business owners or business operators in the targeted area. On the contrary, the evidence suggests that in 1964, the Planning Commission met regularly at a designated time and generally did not give notice of its meetings. (R. Rec. 684a) Additionally, the record indicates that, in 1964, no hearing was held on the question of

whether the designated area was a blighted area within the meaning of the Urban Redevelopment Law, Act of May 24, 1945, P.L. 991, 35 P.S. §1701, et seq., and should be certified as such. (R. Rec. 166a & 167a)

After the Planning Commission certified the "Federal Anderson" area as blighted, no further action of any kind was taken by the Planning Commission or the Urban Redevelopment Authority with respect to the project. Subsequent to that certification of blight in 1964, conditions in the "Federal Anderson" area changed in that buildings in the "blighted" area were demolished (R. Rec. 357a & 358a), there was new construction in the "blighted" area (R. Rec. 358a), and there was rehabilitation of existing buildings in the "blighted" area. (R. Rec. 358a). Eventually, by 1971, the Basic Conditions Report of 1964, which led to the certification of blight in December, 1964, became outdated. (R. Rec. 1368a).

Through the years following the 1964 certification of blight, local government maintained an interest in redeveloping at least a part of the "Federal Anderson" area. Acting pursuant to that interest, the City Planning Commission met on October 4, 1971 and certified an area containing 90.8 acres located in the North Side of Pittsburgh as a blighted area. Approximately 63 of those 90.8 acres had been part of the 203 acres previously certified as blighted in 1964. The revised 90.8 acres redevelopment project was called the "North Shore Project" area. Again, there is no record of any notice having been given, by personal service, newspaper advertisement, posting or otherwise, to any property owners, residents, tenants, business

owners or business operators when the "North Shore Project" area was certified (part of which was "recertified") as blighted.

The property on Isabella Street which is leased by condemnee Keller Office Equipment Company for the operation of its business and which property is owned by the condemnee E-V Company, was included in the 90.8 acres certified as blighted in 1971 as well as in the 203 acres certified as blighted in 1964.[1] That Isabella Street property included a four story building known as 32 Isabella Street, an eight story building known as 36 Isabella Street, and a two story building known as 38 Isabella Street. When E-V Company purchased the property in 1977, Keller Office Equipment Company moved from the four story building (32 Isabella Street) to the eight story building (36 Isabella Street). Subsequently, condemnee E-V Company sold the four story building (32 Isabella Street) in March of 1980. The two story building (38 Isabella Street) was sold in February of 1981.

At the time condemnee E-V Company purchased the property in 1977, a title search was made and that search did not disclose the fact that the property was in a certified blighted area. Likewise, in 1980 and in 1981 when E-V Company subdivided the property and sold two of the buildings it had acquired in 1977 (32 Isabella Street and 38

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[1]Keller Office Equipment Company, a business corporation having two shareholders, Emil F. Kehr and Vincent E. Malone, purchased the office supply business in 1973 from the previous owner, Fred Keller. The business had been operated at the same Isabella Street location since at least 1965. (R. Rec. 706a). E-V Company, a partnership composed of Messers. Kehr and Malone, purchased the Isabella Street Property in 1977 from Lewis Enterprises, the previous landlord from whom Keller had leased its space.

Isabella Street), title searches were done in connection with each of those transfers. Neither of those title searches disclosed that the property and buildings being sold and transferred by E-V Company were located in an area certified as blighted. Additionally, when the sales in 1980 and 1981 were made, Condemnee, E-V Company, was required to submit a plan of subdivision to the appropriate local authorities which plan was officially approved without notice that the property was in an area certified as blighted.

After the condemnee E-V Company had purchased the real estate and buildings in 1977, E-V Company continued to invest money in the property by remodeling the eight story building. In connection with that remodeling work, it was necessary for the condemnee to obtain permits from the City of Pittsburgh in order to lawfully proceed with its plans. (R. Rec. 727a). Those permits were obtained without notice that the building the condemnee, E-V Company, was remodeling was located in an area which was certified as blighted.

There was testimony that since the original certification of blight in 1964, several new businesses had located in the "blighted" area and many of the buildings therein were renovated and remodeled. (R. Rec. 758a-769a & 921a-938a, Exhibit 45 & Exhibit 53) For example, in 1975, Pittsburgh Harley-Davidson, Inc. (Pittsburgh Harley), a condemnee in the lower court proceedings but not an appellant here, applied for and received permission from the Pittsburgh Board of Adjustment to erect an addition to its existing building on Isabella Street (in the block between Federal Street and Sandusky Street) which, unbeknownst to Pittsburgh Harley, was in the "North Shore Project" redevelopment area. Pursuant to the permission

received from the Board of Adjustment, Pittsburgh Harley obtained all of the necessary permits from the City of Pittsburgh and proceeded to erect the addition. All of this was accomplished without notice to Pittsburgh Harley that its property was in an area which had been certified as blighted.

In short, there was no notice given of the meeting of December 18, 1964, when the original 203 acres was certified as blighted. Following that 1964 meeting, there was no notice given to anyone affected by the certification that the designated area had been certified as blighted. Similarly, there was no notice given of the meeting of October 4, 1971, when the 90.8 acres of the North Shore Project was certified as blighted. Again, following that meeting, there was no notice given to anyone affected by the certification that the "North Shore Project" area, wherein the appellants' property and business are located, was certified or recertified as blighted. Further, neither the certification of blight made in 1964 nor the certification of blight made in 1971 was recorded in the Recorder's Office of Allegheny County where it would have served as notice and could have been discovered in a title search. The condemnees and/or their predecessors did not have the slightest inkling that their property and business was in an area certified as blighted and thus exposed to the powers of eminent domain.

On October 9, 1981, the Urban Redevelopment Authority of Pittsburgh exercised the power of eminent domain and filed a declaration of taking in the Court of Common Pleas of Allegheny County, Pennsylvania. That declaration of taking pertained to the "North Shore Project" area and included the property at 36 Isabella Street

owned by condemnee E-V Company, and leased by condemnee Keller Office Equipment Company for the operation of its office supply business. The condemnees filed preliminary objections to the declaration of taking and the case was assigned to the Honorable Maurice Louik for adjudication. Judge Louik filed an Adjudication and Order on February 21, 1986, in which he denied appellants' preliminary objections. Judge Louik characterized this case as a struggle of a small business to maintain its property in the face of the governmental exercise of eminent domain. He stated that upon the record there is a "clear appearance of inequality of treatment" with respect to the condemnees in this case. Judge Louik went on to say:

> "If left to our own discretion, we would sustain condemnees' preliminary objections, but under the standard enunciated by the Commonwealth Court, we cannot substitute our discretion for that of the Authority." (Louik, J., Adjudication and Order, February 21, 1986, p. 13)[2]

I.

First, the condemnees argue that the declaration of taking filed on October 9, 1981, based upon a certification of blight in 1971 which was, in part, a "recertification" of blight originally made in 1964, is void and of no legal effect. The condemnees base their argument on the failure

[2]The Commonwealth Court standard referred to and followed by the trial judge is set forth in *Matter of Condemnation by Urban Redevelopment Authority of Pittsburgh*, 92 Pa Commw. 602, 499 A.2d 1146 (1985), where the Commonwealth Court reiterated that absent proof that a certification of blight was arbitrary, capricious, made in bad faith or the product of an abuse of discretion, that the trial judge may not substitute his discretion for that of the agency regarding the conditions of blight.

of the Planning Commission to provide a "due process hearing" with respect to the certification of blight in 1964 and the "recertification" of blight in 1971.

The condemnees point out in their brief that the Urban Redevelopment Law, Act of May 24, 1945, P.L. 991, 35 P.S. §1701, et seq., does not specifically provide for notice and a hearing regarding a certification of blight. Furthermore, neither the Second Class City Code, Act of March 7, 1901, P.L. 20, as amended, 53 P.S. §22101, et seq., nor the Municipalities Planning Code, Act of July 31, 1968, P.L. 805, as amended, 53 P.S. §10101, et seq., specifically require notice and a hearing with respect to a certification of blight in delineating the powers and responsibilities of planning commissions. Nonetheless, the legislature's failure to make provision for notice and a hearing in those statutes does not negate the condemnees' right to due process. That right is guaranteed by the Constitutions of the United States and of Pennsylvania.

The Fifth Amendment of the United States Constitution provides:

> No person shall be . . . deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Article 1, §10 of the Pennsylvania Constitution provides:

> [P]rivate property [shall not] be taken or applied to public use, without authority of law and without just compensation being first made or secured.

"The power of eminent domain, next to that of conscription of man power for war, is the most awesome grant of power under the law of the land." *Winger v. Aires,* 371 Pa.

242, 244, 89 A.2d 521, 522 (1952) It may never be exercised to appropriate private property except for public use. Almost 150 years ago this court said:

> The right of eminent domain does not authorize the government to take the property of the citizen for the mere purpose of transferring it to another, even for a full compensation, when the public is not interested in the transfer. Such an arbitrary exercise of power would be an infringement of the constitution, as not being within the power delegated by the people to the legislature.

*Pittsburgh v. Scott,* 1 Pa. 309, 314 (1845) Uses which are public uses sufficient to permit the exercise of eminent domain are to be determined by the legislature, subject to correction or restriction where it clearly appears that the right is abused. *Id.* at p. 314.

The legislature has enacted the Urban Redevelopment Law, 35 P.S. §1702(a) which declares as a matter of legislative findings and policy that urban areas become *blighted* because of: (1) unsafe, unsanitary, inadequate or overcrowded conditions of the dwellings in the particular area; (2) inadequate planning of the area; (3) excessive land coverage by the buildings in the area; (4) lack of proper light and air and open space; (5) the defective design and arrangement of the buildings in the area; (6) faulty street or lot layout; or (7) land uses in the area which are economically or socially undesirable. The Urban Redevelopment Law further provides, inter alia, as follows:

> (b) That such conditions or a combination of some or all of them have and will continue to result in making such areas economic or social liabilities, harmful to

the social and economic well-being of the entire communities in which they exist, depreciating values therein, reducing tax revenue, and thereby depreciating further the general community-wide values. (35 P.S. §1702(b))

(c) That the foregoing conditions are beyond remedy or control by regulatory processes in certain blighted areas, or portions thereof, and cannot be effectively dealt with by private enterprise under existing law without the additional aids herein granted and that such conditions exist chiefly in areas which are so subdivided into small parcels and in divided ownerships that their assembly for purposes of clearance, replanning and redevelopment is difficult and impossible without the effective public power of eminent domain. (35 P.S. §1702(c))

(c.1) That certain blighted areas, or portions thereof, may require total acquisition, clearance and disposition, subject to continuing controls as provided in this act, since the prevailing condition of decay may make impracticable the reclamation of the area by rehabilitation or conservation, and that other blighted areas, or portion thereof, through the means provided in this act, may be susceptible to rehabilitation or conservation or a combination of clearance and disposition and rehabilitation or conservation in such a manner that the conditions and evils hereinbefore enumerated may be eliminated or remedied. (35 P.S. §1702(c.1))

(d) That the replanning and redevelopment of such areas are in accordance with sound and approved plans for their redevelopment will promote the public health, safety, convenience and welfare. (35 P.S. §1702(d))

The legislature, in enacting the Urban Redevelopment Law, has declared that the clearance and redevelopment of a blighted area is a public use which justifies the exercise of the power of eminent domain and the expenditure of public monies. The key to the lawful exercise of eminent domain in an area designated for redevelopment is that the area is blighted as defined by the Urban Redevelopment Law. Once there is an official certification that an area is blighted, the way is clear for the exercise of eminent domain to acquire the properties within the certified area. The properties may then be transferred to a private redeveloper[3] who proceeds to redevelop the area under a contract with the Authority. Property owners in the redevelopment area are exposed to the involuntary loss of their property. Likewise, business owners who operate their businesses in the area stand to lose their businesses. These drastic consequences are made possible by an official certification that the neighborhood is in a blighted area notwithstanding the actual physical condition of the various properties.

John P. Robin, who served as the first Director of the Urban Redevelopment Authority of Pittsburgh from 1948 to 1955 and who, at the time of his testimony had been again serving as the Authority's Chairman since 1977, testified that when he became Chairman of the Redevelopment Authority for the second time, the "North Shore Project" was a high priority. (R. Rec. 1133a-1134a) Mr.

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[3]The Urban Redevelopment Law defines "Redeveloper" as: Any individual, government, partnership or public or private corporation that shall enter or propose to enter into a contract with an Authority for the redevelopment of an area, or any portion thereof, or any building or structure thereon, under the provisions of this act.

35 P.S. §1703(1).

Robin and his colleagues called upon various companies to seek advice and to develop interest in the proposed redevelopment project. The Authority discovered that the Mellon-Stuart organization, a company involved in real estate development and construction, had an interest in the redevelopment area. The North Shore area, because of its convenient location, was an attractive location. (R. Rec. 1135a) Mellon-Stuart indicated a desire to relocate its home office to that area. Eventually Mellon-Stuart was selected as the redeveloper. (R. Rec. 1135a-1136a)

Mr. Robin testified that the properties on Isabella Street had become the subject of the redevelopment proposal because those who had studied the area concluded that the blocks between the Sixth Street, Seventh Street and Ninth Street bridges spanning the Allegheny River between Pittsburgh's Golden Triangle and the North Side was the appropriate place to begin redevelopment of the North Shore area. (R. Rec. 1136a) Mr. Robin testified that:

> [The blocks of Isabella Street] were the ones that are most imediately adjacent to the built-up portion of the Golden Triangle and are part of the visibility and easily exchanged with the Triangle itself.
>
> Secondly, because they are compact blocks which each one (sic) can be handled as a unit. Third, because their acquisition was within the probable range of the Authority's financial capacity. But primarily because they were *opportunity blocks* in the area. (emphasis added).

(R. Rec. 1136a) Mr. Robin defined an "opportunity block" as:

> [A block] where you can have a chance of finding a developer. There's no point in proclaiming an entire city a redevelopment area and leaving it up to chance. You try to find specific redevelopment project points with the redevelopment area having defined that. So these blocks, in particular, this block between these two bridges, became the best opportunity for development.

(R. Rec. 1136a-1137a).

According to the witness Mr. Robin, the Pittsburgh Redevelopment Authority operated on the principle that once an area has been certified as blighted within the meaning of the Urban Redevelopment Law, the properties within that certified blighted area may be condemned and taken at any time up until the project has been certified as completed by the redeveloper and the Authority. (R. Rec. 142a). This means that the properties within the redevelopment area remain exposed to the powers of eminent domain until the redeveloper and the Authority say the project is complete.

The evidence indicated that the condemnees' property on Isabella Street was coveted by the redeveloper Mellon-Stuart. It appears that Mellon-Stuart desired to acquire the condemnees' property and erect a building thereon which would blend in with the planned construction of other buildings on adjacent tracts and become a part of its new headquarters. Interestingly, buildings nearby and similar to the building of the condemnee E-V Company, one as close as fifty feet away, were not taken by the Authority. These neighboring buildings, comparable to condemnee's

building, were privately rehabilitated by their owners. (See Findings of Fact No. 33, Adjudication, Louik, J., February 21, 1986) Apparently, the buildings in which private rehabilitation by the owners was permitted were not the objects of the redeveloper's desires and plans. Thus, those properties escaped condemnation and taking solely because of the private interests of the redeveloper.

Beginning in 1964 when, without notice, the condemnee E V Company's property on Isabella Street was part of the "Federal Anderson" area certified as blighted, and continuing in 1971 when, without notice, that same property was a part of the area recertified as blighted in the "North Shore Project", E-V Company's property was encumbered by that certification of blight. It was encumbered to the extent that it was exposed to the risk that, regardless of how well it was maintained or how it was improved, it could be condemned and taken under the power of eminent domain and turned over to a redeveloper for that redeveloper's private use.

The condemnees argue that the procedure used by the Redevelopment Authority in certifying and recertifying as blighted the area now known as the "North Shore Project" area was defective and thus, caused all steps later taken by the Authority to be void. The condemnees argue that they and/or their predecessors should have been afforded a "due process hearing" at the time when the Authority decided to certify the "Federal Anderson" area and then later the "North Shore Project" area as blighted. In advancing their argument the condemnees rely upon the requirements of due process enunciated by the U.S. Supreme Court in its opinion in *Armstrong v. Manzo,* 380

U.S. 545, 85 S.Ct. 1187, 14 L.Ed.2d 62 (1965). In *Armstrong vs. Manzo, supra,* the Court said:

> A fundamental requirement of due process is 'the opportunity to be heard.' *Grannis v. Ordean,* 234 U.S. 385, 394, 34 S.Ct. 779, 783. It is an opportunity which must be granted at a meaningful time and in a meaningful manner.

380 U.S. at 552. The condemnees argue that under *Armstrong v. Manzo, supra,* they and/or their predecessors were entitled to a meaningful hearing at a meaningful time on the question of whether the area in which their property and business are located was a blighted area within the meaning of the Urban Redevelopment Law. The appellee, Urban Redevelopment Authority of Pittsburgh, argues that the condemnees were afforded a meaningful hearing under the provisions of the Eminent Domain Code, 26 P.S. §406 which provides that the condemnee may, file preliminary objections to the declaration of taking.

> Preliminary objections shall be limited to and shall be the exclusive method of challenging (1) the power or right of the condemnor to appropriate the condemned property unless the same has been previously adjudicated; (2) the sufficiency of the security; (3) any other procedure followed by the condemnor; or (4) the declaration of taking . . .

26 P.S. §1-406(a). The Authority's position is that the hearing the condemnees had on the preliminary objections they filed in this case in 1981, and which objections were finally adjudicated in 1986, was a meaningful hearing at a meaningful time and satisfies the requirements of due process. I disagree.

It is clear that the elements of due process are notice and an opportunity to be heard. *Armstrong v. Manzo, supra, Fuentes v. Shevin,* 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed. 2d 556 (1972), *Martin v. Department of Environmental Resources,* 120 Pa. Commw. 269, 548 A.2d 675 (1988). It equally clear (and undisputed) that the condemnees and/or their predecessors did not receive notice (by personal service, advertisements, posting or otherwise) of the planning commission's intent to certify the "Federal Anderson" area in 1964 and then the "North Shore Project" area in 1971 as blighted. Additionally, it is equally clear (and undisputed) that the condemnees and/or their predecessors were not afforded an opportunity to be heard in 1964 nor in 1971 on the question of the certification of blight which directly and substantially affected their property. I would hold, therefore, that the condemnees and/or their predecessors were denied a meaningful hearing at a meaningful time to challenge the certification of blight which affected their property and property rights and exposed their property to condemnation.

The hearing granted to condemnees on their preliminary objections to the declaration of taking under 406(a) of the Eminent Domain Code fails to satisfy the requirements of due process.[4] Judicial review on the condemnees' preliminary objections is limited to proof by the condemnees

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[4]Our sister states New Jersey and New York both provide for public notice and hearing when a local government targets an area for redevelopment.

The New Jersey Blighted Area Act, N.J.S.A. 40:55-21.4 provides:

> The governing body or the planning board shall thereupon cause a hearing to be held at an appointed time and place for the purpose of hearing persons interested in, or who would be

*(Continued on next page)*

that the certification and/or recertification of blight was arbitrary and capricious and/or constituted fraud or an abuse of discretion on the part of the redevelopment authority. *Simco Stores v. Redevelopment Authority of Philadelphia,* 455 Pa. 438, 317 A.2d 610 (1974). The condemnees' burden in this regard is a heavy one indeed. *Id.*

If the condemnees and/or their predecessors had been given notice and an opportunity to be heard on the condition of blight in 1964 and again in 1971 when the question of blight was before the planning commission for certification, the commission, being the moving party, would have properly had the burden to establish that one or more of the conditions of blight, as defined by the Urban Redevelopment law, then and there existed. Additionally, the commission, as the moving party, would have properly had the burden of establishing that such conditions or a combination of some or all of those conditions had the effect of making the targeted area a social or economic liability, resulting in depreciated property values and reduced tax revenues; and such conditions were beyond the remedy and control of regulatory processes; and such conditions could not be effectively dealt with by private enterprises.

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*(Continued)*

affected by, a determination that the area is a blighted area, as defined in this act, and who favor or who are against such a determination.

Section 40:55-21-5 provides for public notice of such hearing setting forth, inter alia, the boundaries of the area to be considered for a certification of blight.

The New York Urban Redevelopment Corporations Act, 41 C.L.S. Private Housing Finance Law §203 provides: "A planning commission may approve a development plan after a public hearing . . ." §203(g) sets forth the requirements of the notice of the public hearing to be held by the planning commission prior to approval of any development plan.

35 P.S. §§1702(b), 1702(c), 1702(c.1) and 1702(d), supra. Further, the commission, as the moving party, would have properly had the burden to prove that the condemnees' property and business were reasonably part of the area in which one or more of the statutory conditions of blight applied. The commission's witnesses could have been cross-examined and its evidence could have been thoroughly reviewed by the condemnees and their counsel. The condemnees could then rest on their cross examination of the commission's witnesses or introduce evidence of their own to contradict the assertions of the commission in opposing the proposed certification of blight, particularly as it affected condemnees' immediate neighborhood and property. The condemnees and/or their predecessors, whose property and property rights would be affected by the commission's planned certification of blight, properly could prevail without being required to *affirmatively* prove anything. This is contrasted with the heavy burden which *Simco Stores* places on the condemnees in contesting the certification of blight, after the fact, by preliminary objections to the declaration of taking.[5] This burden is often made more weighty by a long delay between the certification of blight and the declaration of taking as was the case here. The condemnees were faced with the distinct burden of proving that the certification of blight made in 1971 which, in material part, was a recertification of the certification blight made in 1964, was arbitrary, capricious, fraudulent or an abuse of discretion. During such a lapse of time, conditions change, witnesses, for many reasons,

[5]If there is to be a heavy burden, it should fall upon the governmental agency which proposes to take private property from one citizen and turn that property over to another citizen known as a redeveloper, for the redeveloper's private use.

become unavailable, evidence is lost and memories fade. Under *Simco Stores,* if the condemnees are unable to prove that the certification was arbitrary, capricious, fraudulent or an abuse of discretion, then the condemnation stands and the condemnees' property may be taken even though the commission may not have been able to establish any of the statutory conditions of blight at the time of the certification. Such a hearing is not a meaningful hearing at a meaningful time and thus fails to satisfy the requirements of due process.

II.

Next, the condemnees argue that the condemnation and taking is invalid in that they were not afforded a hearing concerning the certification of blight as required under the provisions of the Local Agency Law, 2 Pa. C.S.A. §101 et seq.[6]

Section 553 of the Local Agency Law provides:

> No adjudication of a local agency shall be valid as to any party unless he shall have been afforded reasonable notice of a hearing and an opportunity to be heard . . .

Act of 1978, April 28, P.L. 202, No. 53, §5, 2 Pa. C.S.A. §553 (Substantial reenactment of act of December 2, 1968 (P.L. 1133, No. 353), §4 (53 P.S. §11304)) The question,

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[6]As I noted above, the Urban Redevelopment Law, 35 P.S. §1701, et seq., fails to provide a procedure whereby the property owners in a neighborhood which the local government proposes to certify as blighted may be given notice and an opportunity to be heard. The Local Agency Law, 2 Pa. C.S.A. §101, et seq., was enacted to fill such a void and provide a forum and procedure where none otherwise exists. See *Boehm v. Board of Education of Pittsburgh,* 30 Pa. Commw. 468, 373 A.2d 1372 (1977).

thus, is whether the certifications of blight made by the planning commission in 1964 and again in 1971 constituted adjudications of a local agency.

"Local Agency" is defined by the Local Agency Law in §101 as: "A government agency other than a Commonwealth agency." "Government Agency" is defined in §101 as "Any Commonwealth agency or any political subdivision or municipal or other local authority, or any officer or agency of such political subdivision or local authority." The Planning Commission of the City of Pittsburgh is an agency of a local authority—the Urban Redevelopment Authority. As such, it is a "local agency" within the meaning of the Local Agency Law. Thus, any adjudication of the Pittsburgh Planning Commission is subject to the provisions of the Local Agency Law.

"Adjudication" is defined by the Local Agency Law in §101 as:

> Any final order, decree, decision, determination or ruling by an agency affecting personal or property rights, privileges, immunities, duties, liabilities or obligations of any or all of the parties to the proceedings in which the adjudication is made. The term does not include any order based upon a proceeding before a court or which involves the seizure or forfeiture of property, paroles, pardons or releases from mental institutions.

The certifications of blight made by the planning commission with respect to the "Federal Anderson" area in 1964 and the "North Shore Project" area in 1971 were broad determinations or rulings by the commission affecting the property rights, privileges and immunities of the condemnees and/or their predecessors.

> The extensive powers of the Redevelopment Authority to condemn large areas of land, including those tracts of land which are safe, sanitary and prosperous but which happen to be within an otherwise blighted area, is entirely contingent on the Planning Commission's certification of the area as blighted. Section 9(i) of the Urban Redevelopment Law, 35 P.S. §1709(i). Because the landowners [and business owners] here would not have been exposed to the powers of the Redevelopment Authority but for the certification of blight, I believe that the certification constitutes a determination or ruling by an agency affecting the *property rights* or the *immunities* of the landowners [and business owners], and must therefore fall within the definition of an 'adjudication' under the Local Agency Law. 2 Pa. C.S.A. §101.

*Cass Plumbing & Heating Co. v. PPG Industries,* 52 Commw. 600, 416 A.2d 1142, 1149 (1980) (Blatt, J. Dissenting).

When the public learns that an area has been certified as blighted, deleterious consequences befall landowners and business owners in that area. There was testimony by condemnees' real estate expert that real estate, as well as equipment, machinery and fixtures situated in a certified blighted area, are no longer readily saleable on the open market; and it is difficult for property owners to obtain mortgages or other loans secured by real estate within the area certified as blighted. Further, business tenants and residential tenants alike have a tendency to move from the certified blighted area as soon as possible, often before the end of their lease terms resulting in vacant and boarded-up buildings. Maintenance and repair of the structures within

the area are usually neglected by the property owners, further affecting the real estate in a negative way. (R. Rec. 1034a-1035a). These are some of the effects on the property rights, privileges and immunities of property and business owners in an area certified as a blighted area.

The majority miminizes the effect a certification of blight has upon the property and business owners in the area certified. The majority concludes that even though a certification of blight may: (a) depress the marketability of the real estate and the equipment, machinery and fixtures located therein; (b) render it difficult to obtain financing of any kind that is secured by real estate in the certified area; (c) motivates tenants to flee the area, often before leases have expired, resulting in vacant and boarded-up buildings; and (d) result in property owners neglecting maintenance and repair of their buildings further depressing property values, these injurious conditions, nonetheless, do not establish that legal rights are affected by the certification itself.[7] The majority ignores the obvious. Prior to the certification of blight in 1964 ("Federal Anderson Area") and recertification of blight in 1971 ("North Shore Project Area"), the property within the respective project areas could not be condemned and taken by local government

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[7]The majority observes that the deletrious effects which the appellants' expert testified was caused by a certification of blight applies only where such a certification is generally known. This, the majority says "reinforces the conclusion that the deleterious effects flow not from the certification itself but from speculative subjective reactions to it." (Slip Opinion, p. 9) The majority's observation neglects to take into account that notification to the property and business owners in the targeted area along with a hearing on the question of blight may very well result in the government failing to prove blight. Further, due process must not be sacrificed on the altar of secrecy so that reactions to a certification of blight by the citizenry may be avoided.

and then transferred to a private redeveloper for that redeveloper's private use. After the certification of blight in 1964 and the recertification in 1971, the property within the area certified as blighted was now lawfully exposed to condemnation and taking for redevelopment and use by a private redeveloper. As the majority points out, among the powers given to redevelopment authorities is the power to make and implement plans for a program of voluntary repair and rehabilitation of the real estate and buildings within the certified area. This results in allowing the private redeveloper to pick and choose the locations within the certified area the redeveloper wishes to redevelop and/or use for the redeveloper's own private purposes. In this case the private redeveloper, Mellon-Stuart, chose to relocate its own business offices to the property owned by appellant E-V Company and occupied by appellant Keller Office Equipment Company. There is no question that a certification of blight is a decision, determination or ruling affecting property rights, privileges and immunities and thus is an adjudication within the meaning of the Local Agency Law.

Judge Blatt observed in her dissent in *Cass Plumbing & Heating Co. v. PPG Industries, Inc.*, supra:

> [T]he entire scheme for the certification of an area as blighted is weighted against the landowners [and business owners] in favor of the condemnor, leaving the Redevelopment Authority 'with unbounded, unfettered and limitless discretionary power to appropriate and condemn as dilapidated . . . *as large an area as they believe can be made more prosperous.*' (citation omitted)

*Id.* at p. 60, 416 A.2d at p. 1150. A property owner who owns sound and well maintained property in a flourishing neighborhood may become exposed to condemnation for the purposes of redevelopment merely because his property is located in an "opportunity block" as defined in the testimony of John P. Robin cited *supra.* These kind of blocks are included in a certification of blight regardless of how well maintained they may be and notwithstanding that the statutory criteria of blight does not apply to them standing alone. Mr. Robin's testified that "opportunity blocks" are made part of a redevelopment package area as an inducement to attract redevelopers. (See testimony of John P. Robin, R. Rec. 1136a-1137a).

We are treading on dangerous ground when we permit, in this country, one party to take another's property merely because that party "justs wants to have it." "A man's home and property used to be his castle." *Cass Plumbing & Heating Co. v. PPG Industries, Inc.,* 488 Pa. 564, 565, 412 A.2d 1376, 1377 (1980) (Dissenting Opinion, Larsen J., joined by Flaherty, J.). When the government wishes to commence a procedure which ultimately leads to dispossessing a property owner of his "castle", the government's action must meet the requirements of due process by giving such property owner timely notice and a meaningful opportunity to be heard.[8] I thus would hold that the

[8]Timely notice and an opportunity to be head are mandated by the Historic Preservation Act, 1988, May 26, P.L. 414, No. 72, 37 Pa. C.S.A. §501 et seq., where the government proposes to designate private property for inclusion on the Pennsylvania Register of Historic Places. Section 503 of that Act provides:

> The owner of private property of historic, architectural or archaeological significance, or a majority of the owners of private properties within a proposed historic district, shall be given the

*(Continued on next page)*

condemnation and taking of condemnees' property and business in this case is a nullity for failure of the government to afford the condemnees reasonable notice and an opportunity to be heard in accordance with the Local Agency Law.

I would reverse the order of the Commonwealth Court.

**Mr. Justice Papadakos joins in this dissenting opinion.**

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*(Continued)*

opportunity to concur in, or object to, the nomination of the property or proposed district for inclusion on the Pennsylvania Register of Historic Places. If the owner of the property, or a majority of the owners of the properties within the proposed historic district, object to the inclusion, the property shall not be included on the register.

37 Pa. C.S.A. §503.

**[J-146-1990]**

**IN THE SUPREME COURT OF PENNSYLVANIA**
**WESTERN DISTRICT**

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| In the Matter of: CONDEMNATION BY THE URBAN REDEVELOPMENT AUTHORITY OF PITTSBURGH OF CERTAIN LAND IN THE TWENTY-SECOND AND TWENTY-THIRD WARDS OF THE CITY OF PITTSBURGH ALLEGHENY COUNTY, PENNSYLVANIA REDEVELOPMENT AREA NO. 39 (NORTH SHORE), BEING PROPERTY OF:<br><br>E-V COMPANY, a partnership composed of Emil F. Kehr and Vincent E. Malone, or any other persons found to have an interest in the the property,<br><br>KELLER OFFICE EQUIPMENT COMPANY,<br><br>PITTSBURGH HARLEY DAVIDSON, INC., formerly, ALLEGHENY COUNTY DISTRIBUTORS, INC., a Pennsylvania corporation, or any other person found to have an interest in the property<br><br>APPEAL OF: E-V COMPANY, a partnership composed of Emil F. Kehr and Vincent E. Malone, or any other persons found to have an interest in the property, and KELLER-OFFICE EQUIPMENT COMPANY | No. 45 W.D. Appeal Docket 1989<br><br>Appeal from the Order of the Commonwealth Court, entered on July 8, 1988, at No. 821 C.D. 1986, affirming the Order of the Court of Common Pleas of Allegheny County, Civil Division, entered on February 21, 1986, at G.D. No. 81-27642<br><br>117 Pa. Commw. Ct. 475, 544 A.2d 87 (1988)<br><br>ARGUED: September 24, 1990<br>RESUBMITTED: January 11, 1991 |

## DISSENTING OPINION

**MR. JUSTICE FLAHERTY** FILED: JULY 12, 1991

The majority sanctions the wielding of unchecked governmental power over the rights of property owners for

a purpose not traditionally governmental, i.e. taking from one to give to another. At the least minimal due process would require the opportunity for one whose property is to be placed in jeopardy to be heard on the issue of blight which will conclusively determine whether a prospective taking is for a governmental purpose sufficient to invoke the power of eminent domain. I sense the majority is adopting an "end justifies the means" approach and I view it as a dangerous precedent. I dissent.

**Mr. Justice Papadakos joins in this dissenting opinion.**

**SUPREME COURT OF PENNSYLVANIA**
**WESTERN DISTRICT**

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|---|---|
| IN THE MATTER OF: CONDEMNATION BY THE URBAN REDEVELOPMENT AUTHORITY OF PITTSBURGH OF CERTAIN LAND IN THE TWENTY-SECOND AND TWENTY-THIRD WARDS OF THE CITY OF PITTSBURGH, ALLEGHENY COUNTY, PENNSYLVANIA REDEVELOPMENT AREA NO. 39 (NORTH SHORE), BEING PROPERTY OF:<br><br>E-V COMPANY, a partnership composed of Emil F. Kehr and Vincent E. Malone, or any other persons found to have an interest in the property,<br><br>KELLER OFFICE EQUIPMENT COMPANY,<br><br>PITTSBURGH HARLEY DAVIDSON, INC., formerly ALLEGHENY COUNTY DISTRIBUTORS, INC., a Pennsylvania corporation, or any other person found to have an interest in the property<br><br>APPEAL OF: E-V COMPANY, a partnership composed of Emil F. Kehr and Vincent E. Malone, or any other persons found to have an interest in the property, and KELLER OFFICE EQUIPMENT COMPANY | No. 45 W.D. Appeal Docket 1989<br><br>Appeal from the Order of the Commonwealth Court, entered on July 8, 1988, at No. 821 C.D. 1986, affirming the Order of the Court of Common Pleas of Allegheny County, Civil Division, entered on February 21, 1986, at G.D. No 81-27642<br><br>117 Pa. Commw. Ct. 475, 544 A.2d 87 (1988)<br><br>ARGUED:<br>September 24, 1990<br>RESUBMITTED:<br>January 11, 1991 |

## JUDGMENT

ON CONSIDERATION WHEREOF, it is now ordered and adjudged by this Court that the judgment of the COMMONWEALTH COURT OF PENNSYLVANIA be, and the same is, hereby affirmed.

/s/ IRMA T. GARDNER

Irma T. Gardner
Deputy Prothonotary

Dated: July 12, 1991

**IN THE COMMONWEALTH COURT**
**OF**
**PENNSYLVANIA**

IN THE MATTER OF:

CONDEMNATION BY URBAN REDEVELOPMENT AUTHORITY OF PITTSBURGH ETC.

E-V COMPANY, a partnership composed of EMIL F. KEHR and VINCENT E. MALONE and KELLER OFFICE EQUIPMENT COMPANY,

*Appellants*

**NO. 821 C.D. 19**

BEFORE: HONORABLE JAMES CRUMLISH, JR., President Judge
HONORABLE JOHN A. MacPHAIL, Judge
HONORABLE FRANCIS A. BARRY, Judge
HONORABLE JAMES GARDNER COLINS, Judge
HONORABLE MADALINE PALLADINO, Judge
HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE DORIS A. SMITH, Judge

ARGUED: March 23, 1988

## OPINION

OPINION BY FILED: July 8, 1988
PRESIDENT JUDGE CRUMLISH, JR.

E-V Company and its lessee Keller Office Equipment Company (hereinafter collectively referred to as "Condemnees") appeal an Allegheny County Common Pleas Court order overruling their preliminary objections to the declaration of taking filed by the Urban Redevelopment Authority of Pittsburgh (Authority).

E-V, a partnership whose principals are also the shareholders of Keller, purchased the subject property in 1977, allegedly without notice that it was situated within an area certified as blighted since 1964.

The City of Pittsburgh Planning Commission (Commission) originally issued a certificate of blight in 1964 for portions of the Lower North Side section of the City as a step in the ongoing "Pittsburgh Renaissance." However, no redevelopment activity was taken pursuant to this certification.

In October 1971, the Commission issued a new blight certificate for portions of the same area, which included the condemnees' property. This newly certified section became known as the North Shore Redevelopment Area. Pursuant to the latter certification, and in compliance with the statutory scheme set forth in the Urban Redevelopment Law, Act of May 24, 1945, P.L. 991, *as amended*, 35 P.S. §§1701-1719, the Authority prepared the North Shore Redevelopment Proposal and submitted it to the Commission for review. The Commission approved the Proposal and authorized its submission to the City Council of Pittsburgh (Council). After a public hearing in April 1972,

Council voted to approve the Proposal on May 5, 1972, thereby empowering the Authority to take such action as may be necessary for its implementation.

The Authority engaged in various redevelopment activities throughout the following years, and in October 1981, filed the instant declaration of taking for the property. The Condemnees filed preliminary objections which essentially challenged the propriety of the blight certification and the constitutionality of the certification and condemnation procedures under due process principles of the United States and Commonwealth Constitutions. After submission of deposition testimony and exhibits, the trial court overruled the preliminary objections. Condemnees presently appeal to this Court.

Our scope of review in eminent domain cases is limited to a determination of whether the trial court's decision evidences an abuse of discretion or error of law. *Spory Appeal*, 54 Pa. Commonwealth Ct. 17, 419 A.2d 804 (1980). With respect to judicial review in redevelopment authority condemnation cases, the Pennsylvania Supreme Court stated in *Crawford v. Redevelopment Authority of County of Fayette*, 418 Pa. 549, 554, 211 A.2d 866, 868 (1965):

> The power of discretion over what areas are to be considered blighted is solely within the power of the Authority. The only function of the courts in this matter is to see that the Authority has not acted in bad faith; to see that the Authority has not acted arbitrarily; to see that the Authority has followed the statutory procedures in making its determination; and finally, to see that the actions of the Authority do not violate any of our constitutional safeguards.

(as quoted in *Goodwill Industries of Central Pennsylvania, Inc. Appeal*, 30 Pa. Commonwealth Ct. 273, 276, 373 A.2d 774, 776 (1977)).

The Condemnees' primary contention is that the common pleas court hearing provided after the declaration of taking—almost ten years after the blight certification[1]—does not satisfy due process standards in that it was not afforded at a "meaningful time and in a meaningful manner," *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). They argue that the substantial time lapse rendered an effective challenge to the certification practically impossible because there are no available witnesses with firsthand knowledge who are able to recall the planning and certification processes.

Without specifically delineating the requirements of due process owed to all property owners affected by a blight certification, we conclude that the process afforded the Condemnees in this case did not violate their constitutional rights.

First, we emphasize that this is not a case where the condemnees were denied all opportunity to challenge the blight certification. The Condemnees were given the opportunity to meet their burden of proving that the certification was arbitrary, capricious or made in bad faith.[2]

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[1]At the outset, we conclude that the relevant certification for the purposes of determining the legal issues in this case is the 1971 certificate of blight. Although the subject property was within the area previously certified in 1964, we deem that certification to have been superseded by the 1971 certification.

[2]The Condemnees contend, *inter alia*, that Keller was not served with the declaration of taking within thirty days of its filing, as required by Section 405 of the Eminent Domain Code, Act of June 22, 1964,

*(Continued on next page)*

They had eleven months subsequent to the declaration of taking to obtain discovery but sought only to review the Authority's files and to take the deposition of the Authority's engineering consultant, Kenneth Ira Britz. The Condemnees' bare assertions, without substantiation, that critical witnesses are unavailable or unable to competently testify about the 1971 certification are insufficient for us to conclude that there was an unconstitutional violation of due process.

The Condemnees' argument is further weakened by the fact that the Authority produced, and the Condemnees cross-examined, at least two witnesses who were intimately involved with the certification activities and decision-making process.

The first witness was William Waddell, a City Planning Department employee since 1965 and who in 1970 was appointed "city planner" for the City's section encompassing the North Shore Redevelopment Area. He indicated that the Planning Department was in effect the staff which performed the field work for the Commission. In this position, Mr. Waddell acted as the direct liaison between the Planning Department, the Authority and the North Shore community on redevelopment activities

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*(Continued)*

Spec. Sess., P.L. 84, *as amended*, 26 P.S. §1-405. The Authority sought to cure this procedural problem by obtaining a subsequent reinstatement of the declaration with service on Keller within thirty days thereof. While the Eminent Domain Code does not provide for such a procedure, we decline to hold that the taking is invalid for lack of timely service. It is undisputed that E-V was properly served and that the partners of E-V and the shareholders of Keller are one and the same. Under these circumstances, where Keller points to no resultant prejudice, we deem this to be of no consequence.

during the certification period.[3] More importantly, he personally prepared the "Basic Conditions Report" which analyzed and made recommendations as to whether the area's conditions met the blight criteria set forth in the Urban Redevelopment Law, 35 P.S. §1702.[4] This report formed the basis of the Planning Commission's decision to issue the certificate of blight.

There was also the testimony of Jan Krygowski, a Planning Department employee during the pre-certification period and the Planning Director of the Authority in 1970, with responsibility for all redevelopment planning activities. Significantly, Mr. Krygowski was involved with the start-up phase of the North Shore redevelopment project.[5] He personally gathered data and conducted studies on the North Shore area during the certification period.[6] Like Mr. Waddell, Mr. Krygowski was present at the Planning Commission meetings, as well as the community meetings conducted during the certification process.

In addition, the Condemnees had access to all of the Authority's files pertaining to the North Shore redevelopment project, including memoranda and studies relied upon in the blight certification process.

Following our thorough review of the record testimony and evidence, we can discern no indication that the mere lapse of time has so disabled the Condemnees in proving their allegations as to rise to the level of a constitutional violation.

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[3]Deposition of William B. Waddell, 11/17/82, pp. 12-14.

[4]*Id.* at pp. 14-18.

[5]Deposition of Jan Krygowski, 11/20/82, pp. 20-21.

[6]*Id.* at 31-32.

The Condemnees next contend that substantial changes and renewed vitality in the area since 1971 render the blight certification "stale." Thus, they argue, the certification is an improper basis for the condemnation. They suggest that there should have been an updated determination of blight nearer in time to the taking. They also argue that the Authority abandoned the redevelopment project sometime after the blight certification and is therefore estopped from acting pursuant to it.

We must reject these contentions inasmuch as they fail to recognize the trial court's findings that establish that the Authority *continually* engaged in redevelopment activities throughout the post-certification period and up to the time of the present taking. *In the Matter of: Condemnation By Urban Redevelopment Authority of Pittsburgh* (No. GD 81-27642 Allegheny County Common Pleas Civil Division, filed February 21, 1986), slip op. at 5. Moreover, the broad eminent domain powers vested in redevelopment authorities, 35 P.S. §1712, requires recognition that urban renewal cannot be accomplished overnight. As we stated in *Leo Realty Co. v. Redevelopment Authority of Wilkes-Barre*, 13 Pa. Commonwealth Ct. 288, 292, 320 A.2d 149, 152 (1974):

> It is well recognized that urban renewal takes place over long periods of time and through many stages of development. That part of a city which may have no need of redeveloping today may be in dire need four years later.

In the instant case, the Authority produced uncontradicted evidence that the area was blighted in 1971.[7] Although changes occurred during the following years it is the object of urban renewal to produce such changes and enhance the conditions of the redevelopment area. Hence, we cannot accept the Condemnees' assertion that the alleged changes required an updated certification in this case.

The Condemnees next contend that the Commission failed to act with deliberate, objective and unbiased judgment in issuing the blight certification in that it simply "rubber stamped" the recommendations of the planning staff. However, the Condemnees have failed to overcome the presumption that the Commission performed its duties in good faith. *Simco Stores v. Redevelopment Authority of Philadelphia*, 455 Pa. 438, 442, 317 A.2d 610, 613 (1974). Moreover, the testimony supports the findings that the Commisson had access to numerous blight studies and reports upon which to base its determination, and that the Commission did not engage in arbitrary or capricious conduct.

We likewise reject the contention that the certification is void for vagueness due to the absence of specific and detailed findings by the Commission to support its determination. There is no statute or regulation requiring such findings. Moreover, such findings would serve no purpose inasmuch as the narrow judicial scope of review precludes

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[7]The Authority produced the expert testimony of Mr. Krygowski, who offered his opinion supporting the Commission's determination that the North Shore area was in fact "blighted" in 1971. Deposition of Jan Krygowski, 11/20/82, pp. 51-52. In view of Mr. Krygowski's testimony, we also reject the Condemnees' separate contention that the Authority failed to show that the certified area was in fact blighted.

inquiry into the wisdom of the Commission's determination of blight. *Crawford.*

As an alternative to their procedural due process arguments, the Condemnees contend that the Commission's blight certification constitutes an "adjudication" affecting property rights which, under the Local Agency Law, 2 Pa. C.S. §§105, 551-595, 751-754, requires notice, a record hearing and a written decision supported by specific findings and reasoning.

We addressed this issue in *Cass Plumbing & Heating Co. v. PPG Industries, Inc.*, 52 Pa. Commonwealth Ct. 600, 416 A.2d 1142 (1980). Therein, we agreed with the trial court's conclusion that a mere certification of blight is not an adjudication within the meaning of the Local Agency Law. *Id.*, 52 Pa. Commonwealth Ct. at 613, 416 A.2d at 1149. In so holding, we noted that the condemnees' challenge to the blight certification could be fully litigated through the procedures provided under the Eminent Domain Code—i.e. the filing of preliminary objections to the declaration of taking. *Id.* That same procedure is available to the Condemnees in this case. As we stated in *Boehm v. Board of Education of School District of Pittsburgh*, 30 Pa. Commonwealth Ct. 468, 474, 373 A.2d 1372, 1375 (1977), "[t]he Local Agency Law . . . was enacted to provide a forum for the enforcement of statutory rights *where no procedure otherwise exists* . . . . " (Citation omitted; emphasis added). We confirm our ruling in *Cass* and conclude that the Local Agency Law is inapplicable to the present case.

The Condemnees next contend that the taking is invalid because of impermissible discrimination in rehabilitation selection. They argue that they were denied the

opportunity to rehabilitate their property as an alternative to condemnation. This contention, however, is simply not borne out by the record testimony and the caselaw. The Authority is not required to offer self-rehabilitation in every case, *Nixon Hotel, Inc. v. Redevelopment Authority of Butler*, 11 Pa. Commonwealth Ct. 519, 315 A.2d 366 (1974), but its decision to condemn must be based upon a proper public purpose, *Goodwill*. The testimony of John P. Robin, Chairman of the Authority, supports the trial court's conclusion that the underlying reason for the condemnation was to effect the purpose of implementing redevelopment in the area.[8] Our review of the record discloses no indication that the Authority impermissibly denied the Condemnees any entitlement they may have to self-rehabilitation of their property.

The Condemnees' final contention is that the taking is invalid because the redevelopment proposal, which was cited in the Declaration of Taking as the justification for the condemnation, did not include their property on the list of properties to be acquired.[9]

Although the Condemnees' property was not on the above-referenced list we deem this to be insignificant for the purpose of determining the validity of the taking. The Authority's chief consultant, Kenneth Britz, explained that the only purpose of this list was to reflect properties to be

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[8]Deposition of John P. Robin, 10/29/82, pp. 27-45.

[9]This issue was raised in the Condemnees' amended preliminary objections. The Authority contends that since the Condemnees failed to seek consent of counsel or leave of court to file the amended pleading, this issue was waived. We tend to agree with the Authority's position. Nonetheless, since our disposition of the issue will not affect the outcome of the case, and since the trial court found as facts that the amended pleading was filed and that the property was not on the above-referenced list, we will address the issue.

acquired *in that given year* in order to receive federal funds for that year.[10] Moreover, the testimony of Jan Krygowski establishes that the property was contemplated for acquisition since the inception of the redevelopment project.[11]

Since we conclude that the trial court committed no error of law or abuse of discretion, we affirm the order overruling Condemnees' preliminary objections.

/s/ JAMES CRUMLISH, JR.
James Crumlish, Jr.
President Judge

Date: July 8, 1988

[10]Deposition of Kenneth Ira Britz, 10/1, 5, 6, 13/82, pp. 15-16.
[11]Deposition of Jan Krygowski, 11/20/82, pp. 60-62.

**IN THE COMMONWEALTH COURT**
**OF**
**PENNSYLVANIA**

IN THE MATTER OF:

CONDEMNATION BY URBAN REDEVELOPMENT AUTHORITY OF PITTSBURGH ETC.

E-V COMPANY, a partnership composed of EMIL F. KEHR and VINCENT E. MALONE and KELLER OFFICE EQUIPMENT COMPANY,

*Appellants*

**NO. 821 C.D. 1986**

## ORDER

The order of the Allegheny County Common Pleas Court, No. GD 81-27642 dated February 21, 1986, is affirmed.

/s/ JAMES CRUMLISH, JR.
James Crumlish, Jr.
President Judge

Date: July 8, 1988

CERTIFIED FROM THE RECORD
AND ORDER EXIT
July 8, 1988

/s/ C. R. HOSTUTLER
Deputy Prothonotary/Chief Clerk

**IN THE COURT OF COMMON PLEAS**
**OF ALLEGHENY COUNTY, PENNSYLVANIA**

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| IN THE MATTER OF: CONDEMNATION BY URBAN REDEVELOPMENT AUTHORITY OF PITTSBURGH OF CERTAIN LAND IN THE TWENTY-SECOND AND TWENTY-THIRD WARDS OF THE CITY OF PITTSBURGH, ALLEGHENY COUNTY, PENNSYLVANIA REDEVELOPMENT AREA NO. 39 (NORTH SHORE), BEING PROPERTY OF: | CIVIL DIVISION<br><br>NO. G.D. 81-27642<br><br>ADJUDICATION AND ORDER<br><br>LOUIK, J. |
| E-V COMPANY, a partnership composed of Emil F. Kehr and Vincent E. Malone, or any other persons found to have an interest in the property,<br><br>KELLER OFFICE EQUIPMENT COMPANY,<br><br>PITTSBURGH HARLEY DAVIDSON, INC., formerly Allegheny County Distributors, Inc., a Pennsylvania Corporation, or any other person found to have an interest in the property. | Copy of Adjudication and Order sent to:<br><br>George R. Specter, Esquire<br><br>Thomas J. Dempsey, Esquire |

## ADJUDICATION

**LOUIK, J.**

The eminent domain matter before the Court consists of consolidated actions G.D. 81-27640, 81-27641 and 81-27642. The pending takings relate to the North Shore Revelopment Area in the 22nd and 23rd Wards of Pittsburgh. In September, 1982, the parties were ordered to try the case by deposition. Between September 24, 1982, and February 28, 1983, nineteen depositions were taken. This court has reviewed the depositions, along with the extensive briefs and the exhibits filed by both parties, as well as the suggested Findings of Fact and Conclusions of Law. The main issues involved in this case turn on the fact that the taking of these properties was effected in 1981, although there was an original certification of blight of this redevelopment area as early as 1964. In 1971, the U.R.A. certified as blighted an area which included a portion of that originally certified area. As a result of the substantial time lapse between these events, the Condemnees allege that the takings are void as being arbitrary, capricious and in bad faith; in violation of Due Process; impermissibly premised upon private gain rather than public benefit, as well as being stale and abandoned. In addition, condemnees assert that there has been an unconstitutional discrimination regarding acquisition and rehabilitation selection. With a view towards these issues, the court finds the following facts:

## FINDINGS OF FACT

(1) E-V Company, a partnership between Emil F. Kehr and Vincent E. Malone, owned the property which

is the subject of the pending condemnation action on October 9, 1981.

(2) The Urban Redevelopment Authority (hereinafter URA) filed a taking against the property of E-V Co., or others having an interest in it on October 9, 1981.

(3) Although the lease was unrecorded, the E-V Co. in fact was leasing the subject property to Keller Office Equipment Co., the shareholders of which were Emil F. Kehr and Vincent E. Malone on October 9, 1981.

(4) Within 30 days of the filing of the Declaration of Taking, it was served on E-V Company and E-V also filed preliminary objections to the Declaration of Taking within that same period of time.

(5) URA obtained a reinstatement of the Declaration of Taking, and served the same on Keller Office Equipment Co., on May 13, 1982.

(6) Condemnees filed amended Preliminary Objections on September 16, 1982, to which the URA filed an Answer and New Matter.

(7) The Redevelopment Area which is the subject of this case is Redevelopment Area No. 39 (North Shore), located in the 22nd and 23rd Wards of the City of Pittsburgh, Allegheny County, Pennsylvania.

(8) The Redevelopment Area consists of approximately 90.8 acres of land, including Isabella Street, and property there acquired by E-V Company.

(9) This area was the subject of an on-going blight study conducted by the City of Pittsburgh.

(10) At a meeting on December 18, 1964, the City of Pittsburgh's Planning Commission issued a certificate of blight for a different but overlapping area, also known as "The Lower North Side Study Area."

(11) That area consisted of 203 acres of land, also in the 22nd and 23rd Wards of the City of Pittsburgh.

(12) On October 4, 1971, the City Planning Commission certified the 90.8 acres of land as blighted, and this land included 63 acres which were part of the 1964 blight certification.

(13) That 63 acres has also been termed "recertified", which is simply a way of stating it was included in the 1971 certification.

(14) The URA Board prepared the North Shore Redevopment Proposal which was approved March 3, 1972.

(15) The City Planning Commission approved the Redevelopment Proposal on March 10, 1972.

(16) The City Council of Pittsburgh held a public hearing on the Proposal on April 12, 1972.

(17) This Proposal was approved by City Council on May 5, 1972.

(18) Documents available to the Planning Commission in connection with its blight study included the following:

(a) April, 1954, North Side Study performed by Pittsburgh Regional Planning Association and Pittsburgh City Planning Commission.

(b) Lower Northside Basic Condition Report, December, 1964. (This report states that it, together with the Staff Report on the Planning Considerations, constitutes the basis upon which the Planning Commission may act in certifying the area for redevelopment and renewal.)

(c) Federal-Anderson Survey and Planning Application by URA, November, 1965.

(19) The following documents were prepared by or for the Planning Commission and URA as part of the Commission's precertification studies:

(a) Ken Kauffman Memorandum listing North Shore businesses by street name. Mr. Kauffman was an assistant planner at URA in charge of making such studies. (2/71).

(b) Kauffman Memorandum listing major employers on the North Shore (2/71).

(c) Kauffman Memorandum re existing conditions of buildings in North Shore area. (2/71).

(d) Kauffman Memorandum re rezoning and special exception requests and occupancy permits. (2/71).

(e) North Shore Project-Water Supply and Facility Study by Mackin Engineering Company. (Undated).

(f) Soils report by Mackin Engineering Company. (1971)

(g) North Shore study, Architectural Analysis by James D. Van Trump and Arthur P. Ziegler. (5/71).

(h) Street Sufficiency Study by Mackin Engineering. (6/71).

(i) "An Historical Study of North Shore Urban Renewal Area", prepared by the Pittsburgh History and Landmarks Foundation. (6/30/71).

(j) "Land Use Marketability—North Shore Project" by October (the name of the consulting company which did the study of Washington, D.C.) (September, 1971).

(k) North Shore Basic Conditions Report, July, 1971, by Department of City Planning and Urban Redevelopment Authority of Pittsburgh.

(l) North Shore Proposal prepared by Planning Department and URA. (March, 1972).

(m) North Shore Basic Conditions Report as submitted to Planning Commission. (September, 1971).

(20) Subsequent to approval of the Redevelopment Proposal by City Council on May 5, 1972, the URA engaged in various redevelopment activities including the following:

(a) Filed an application for the year 1972-1973 to the Federal Neighborhood Development Program, which application was approved. (See Britz Deposition, Volume 12, pp. 60-61)

(b) Filed Neighborhood Development Program application for Federal funds for the year 1973-1974, which application was approved. (See Britz Deposition, Volume 12, p. 61)

(c) Filed Modification No. 1, dated December 1974, to the North Shore Plan. Pursuant to such Modification, URA acquired the B & O Stores, a building located on the north shore of the Allegheny River. (See Britz Deposition, Volume 12, p. 62)

(d) Filed North Shore Planning Application to the Community Economic Development Program, administered by the Pennsylvania Department of Community affairs, in May 1977. The application was granted and the proceeds were utilized by URA to fund a planning study known as the Wallace, McHorg, Roberts and Todd North Shore Study.

(e) Filed an application to the Department of Community Affairs for the acquisition of properties. The application was granted in the second quarter of 1979. (See Britz Deposition, Volume 12, p. 64)

(f) Condemned 28 properties pursuant to the Redevelopment Proposal approved by City Council on May 5, 1972. (See Britz Deposition, Volume 12, p. 81)

(g) Demolished 14 structures pursuant to the Redevelopment Proposal approved by City Council on May 5, 1972.

(21) The North Shore Proposal prepared by the Planning Department and URA (approved May, 1972) set forth the major plan to be used in the redevelopment activities in the 22nd and 23rd Wards of the City of Pittsburgh.

(22) The North Shore Proposal enunciates the following schedules, guidelines and principles to be used in the redevelopment process and plan:

(a) Exhibit 6, North Shore Schedule of Properties to be acquired (June 1, 1972 to May 31, 1973). This list of 27 properties includes locations on West and East General Robinson Street, Federal Street, Sandusky Street and Anderson Street exclusively.

(b) Exhibits 3-10, which include motions, resolutions and ordinances showing in detail the proposed method of redevelopment and public safeguards to be imposed on the entire project area. (1972 Proposal 2)

(c) Acquisition of properties will be limited to that required to remove pockets of blight, to create sites for new housing, commercial and necessary neighborhood facilities, and to remove certain structures that are so badly deteriorated that rehabilitation is not feasible. (1972 Proposal 3)

(d) Relocation activities will commence simultaneously with acquisition activities so that execution of the Plan can proceed as expeditiously as possible. (1972 Proposal 5)

(e) A maximum of nineteen structures on seventeen parcels is slated for demolition during the 1972-1973 period. (1972 Proposal 6)

(f) Rehabilitation is a significant part of the proposed redevelopment and the vast number of properties not to be cleared will undergo rehabilitation treatment for continued use or for change of use. (1972 Proposal 6)

(g) For the most part, rehabilitation will be carried out as a program of private action. (1972 Proposal 6)

(h) Rehabilitation technical assistance will be provided by the Authority to Project Area residents and businessmen. (1972 Proposal 8)

(i) Property owners will be given reasonable time in which to rehabilitate their properties as outlined in the Plan. (1972 Proposal 8)

(j) All the regulations, controls and restrictions with respect to the rise of the land in the Project area, set forth in the Plan, shall be effective for a period of forty (40) years from the effective date of the City Council approval of the Plan. (1972 Proposal 9)

(k) If the owners of properties designated for rehabilitation are unable or unwilling to comply or conform to the rehabilitation standards set forth in the Redevelopment Area Plan—Urban Renewal Plan within twelve (12) months from the date of written notice of the required improvements by the LPA, the LPA upon a determination by resolution, after due consideration that the property owner has failed to achieve substantial conformity with the PRS, may acquire such property by negotiation, or pursuant to the Eminent Domain Law of this State as if the property had originally been planned for acquisition after ninety (90) days written notice to the owner. (1972 Redevelopment Area Plan 15)

(l) Property will be acquired and cleared to: remove substandard conditions, remove blighting influences; provide land for public improvements or facilitie to promote historic or architectural preservation; to provide developable parcels for

redevelopment. (1972 Redevelopment Area Plan 46-47).

(m) Diligent efforts will be made by the Authority through negotiations with the owners of properties not be acquired to voluntarily comply with the standards and controls of the plan. (1972 Redevelopment Area Plan 49)

(23) Emil F. Kehr and Vincent E. Malone purchased the subject property, including three building, in June, 1977, for approximately $110,000.

(24) Although a title examination was made, there was no indication in the title examination that the property was in an area certified as blighted, or subject to pending condemnation proceedings.

(25) In March, 1980, E-V Company sold the 4-story building on its property.

(26) In February, 1981, E-V Company sold the two-story building on its property.

(27) At the time of these sales, E-V Company had no notice of pending condemnation proceedings.

(28) Since acquiring the property in 1977, E-V Company has made substantial improvements to it.

(29) Pittsburgh Harley Davidson purchased property on Isabella Street in 1950, 1951 and 1972.

(30) In 1975 Pittsburgh Harley Davidson (Pgh. H-D) applied for permission to build to its property line, and in 1976 Pgh. H-D erected an addtion to its building.

(31) Pgh. H-D also performed other substantial remodeling and repair work of its property costing in excess of $100,000 in the period subsequent to 1975.

(32) During the period subsequent to 1972, significant neighborhood changes, including building rehabilitation and business development, has occurred in the North Shore Area, including the vicinity on and around Isabella Street, location of the subject property.

(33) These changes, improvements and rehabilitations include the following:

(a) The rehabilitation of the former General Rubber Building by Limbach Company, which is adjacent to the subject property.

(b) The erection of the Mellon-Stuart building on Isabella Street.

(c) The remodeling of the Alling-Cory building.

(d) The relocation of the General Paper Store on Federal Street.

(e) The remodeling of George L. Wilson Company on General Robinson Street.

(f) The remodeling of the Volkwein Building at 117 Sandusky Street, one side of which is adjacent to the E-V Company property.

(34) The property of E-V Company was not listed on Exhibit 6 of the North Shore Proposal of March, 1972, as properties to be acquired in the years 1972-73, nor were they listed for acquisition in future years.

(35) The Declaration of Taking filed in October, 1981, was predicated on the North Shore Proposal and Redevelopment Plan of March, 1972.

(36) No contact was ever made with the owners of E-V Company concerning rehabilitation of their property to meet specified building standards of the North Shore Proposal and Redevelopment Plan.

## CONCLUSIONS OF LAW

1. The Urban Redevelopment Authority has the authority to condemn buildings within an area certified as blighted pursuant to an approved plan for the redevelopment of an area. (Act of May 24, 1945, P.L. 991, Section 3, 35 P.S. §1703(m).

2. The power of discretion over what areas are to be considered blighted is solely within the power of the Urban Redevelopment Authority. (*Crawford v. Redev. Auth.* 418 Pa. 549, 554, 211 A. 2d 866, 868 (1965).

3. The scope of review of a certification of blight is limited to the questions of whether the Authority has acted arbitrarily; in bad faith; in violation of statutory procedures, or in violation of statutory procedures, or in violation of the constitution. (*In Re: City of Harrisburg*, 373 A. 2d 774, 776, citing *Crawford v. Redevelopment Authority*, 211 A. 2d 866, 868).

4. The fact that the E-V Company building is itself structurally sound is not in itself sufficient to prevent its condemnation when it is located in an area properly determined to be blighted. (*In re: City of Harrisburg*, 373 A. 2d 776).

5. A public authority may not condemn lands for a private purpose. *In re: Franklin Town Project*, 339 A. 2d 885 (Pa. Cmwlth 1975).

6. A taking does not lose its public character merely because some aspect of private gain attaches to the taking. *Belovsky v. Redevelopment Authority of Philadelphia*, 357 Pa. 329, 54 A. 2d 277 (1954).

7. While private property cannot be taken by eminent domain for the sole purpose of devoting it to the private use of another, if it is taken for a proper public purpose, it may be permitted to revert to private ownership when the public purpose is discharged. *Moyer Eminent Domain Appeal*, 22 Pa. Cmwlth. 487, 349 A. 2d 781 (1976).

8. Because the Urban Redevelopment Act and the powers granted thereunder are in derogation of the common law and confer the power of eminent domain, a strict construction of that law is required.

9. The Urban Redevelopment Authority is a public body which stands in a fiduciary relationship to the public and to taxpayers, and its conduct must always be guided by the rule of good faith, fidelity and integrity. *Schwartz v. Urban Redevelopment Authority*, 411 Pa. 530, 192 A. 2d 371 (1963).

10. The Urban Redevelopment Act provides for acquisition, clearance, and disposition of portions of blighted areas, on rehabilitation or conservation in such manner that blight or its manifestations may be eliminated or remedied. 35 P.S. §1702 (c.1).

11. The reason underlying the condemnation of the Isabella Street property was to effect the public purpose of carrying out the approved North Shore Plan and Proposal for the redevelopment of that area, which had previously been certified as blight by the City of Pittsburgh Planning Commission.

12. The requirements of eminent domain render the Constitution of Pennsylvania, Article I, Section 10, are that property must be taken for a public purpose, by authority of law, and with just compensation. *Faranda Appeal*, 420 Pa. 295, 299 (1966).

13. There is no specific order of activity in the condemnation of property, if the purpose of the taking accords with the constitutional and statutory requirements. *Faranda Appeal*, 420 Pa. 299.

14. It is presumed that the Planning Commission and Redevelopment Authority performed its duties in good faith, and the burden of proving fraud or abuse of discretion is a heavy one. *Simco Stores et al v. Redevelopment Authority*, 455 Pa. 438, 442 (1974), citing *Washington Park, Inc., Appeal*, 425 Pa. 349, 229 A. 2d 1 (1967). *See also Matter of Condemnation by Urban Redevelopment Authority of Pittsburgh*, 499 A. 2d 1146 (Pa. Commonwealth 1985).

15. The fact that E-V Company's property itself may be free from blight does not make the action of the Redevelopment Authority arbitrary. *See Condemnation of Blocks No. 197 et al., in Shamokin, Pennsylvania*, 41 Northumberland Law Journal 100 (1969).

16. It is not required that a redevelopment authority offer self-rehabilitation in every case. *Nixon Hotel, Inc., v. Redevelopment Authority of Butler*, 315 A. 2d 366, 11 Pa. Cmwlth. 519 (1974) cert. denied 95 S. Ct. 74, 419 U. S. 842, 42 L. Ed. 2d 70.

## DISCUSSION

The North Shore and North Side redevelopment and renewal has been an ongoing part of the Pittsburgh Renaissance. The E-V Company property is situated in the midst of that redevelopment area and has been confronted with a condemnation proceeding against it. Our evaluation of this struggle of a small business to maintain its property cannot be premised on our own emotional reaction to the situation, but rather on the law. It bothers this court that other businesses and landowners in the close vicinity of E-V Company were given an option of rehabilitating their property, whereas E-V was not given that opportunity. For example, the former General Rubber Building is adjacent to E-V's property. Limbach Company privately rehabilitated that building, which, although larger and more ornate, still possess some structural similarities to the E-V Company Building. The Volkwein Company privately remodeled much of its building, one side of which is adjacent to E-V's property. The Alling-Cory building, which is in E-V's general vicinity, also underwent restoration by its private owner. Mellon-Stuart has erected its own building on Isabella Street and, according to plans, will be building on the E-V site after the consummation of the condemnation proceedings. The North Shore Proposal of 1972 specifically declares that "rehabilitation is a significant part of the proposed redevelopment", and "for the most part, rehabilitation will be carried out as a program of private action." *See* Finding 22(f) and (g).

Moreover, the proposal states that property owners will not only be allowed reasonable time in which to rehabilitate, but that technical assistance may also be provided in order to effect rehabilitation. Finding 22(i) and (h).

Although there is clear appearance of inequality of treatment, the evidence is not so clear and convincing of fraud, arbitrariness or bad faith. If left to our own discretion, we would sustain condemnees' preliminary objections, but under the standard enunciated by the Commonwealth Court, we cannot substitute our discretion for that of the Authority.

In *Matter of Condemnation by Urban Redevelopment Authority of Pittsburgh*, the Court reiterated that absent proof that the certification of blight was "arbitrary, capricious, made in bad faith, or the product of an abuse of discretion", that the trial judge may not substitute his discretion for that of a competent agency on the subject of blight. 499 A. 2d 1146 (Pa. Cmwlth. 1985).

The Redevelopment Authority has presented evidence that this certification was based on the research and planning of many competent people. We have reviewed the Commission's Plan and Proposal as well as other evidence. We cannot discern any arbitrary or capricious conduct here.

Moreover, the time span for the redevelopment project was set at forty (40) years. Abandonment or staleness cannot be shown here, as the plan will be in effect through 2012.

The case law governing takings for urban renewal gives broad power to the condemning authority. We cannot find any case law which substantiates the Condemnees' Preliminary Objections based on the instant facts. Based on the foregoing Finds of Fact and Conclusions of Law, we must deny the Condemnees' Preliminary Objections.

**IN THE COURT OF COMMON PLEAS**
**OF ALLEGHENY COUNTY, PENNSYLVANIA**

IN THE MATTER OF:
CONDEMNATION BY THE URBAN REDEVELOPMENT AUTHORITY OF PITTSBURGH OF CERTAIN LAND IN THE TWENTY-SECOND AND TWENTY-THIRD WARDS OF THE CITY OF PITTSBURGH, ALLEGHENY COUNTY, PENNSYLVANIA REDEVELOPMENT AREA NO. 39 (NORTH SHORE), BEING PROPERTY OF:

E-V COMPANY, a partnership composed of Emil F. Kehr and Vincent E. Malone, or any other persons found to have an interest in the property,

KELLER OFFICE EQUIPMENT COMPANY,

PITTSBURGH HARLEY DAVIDSON, INC., formerly Allegheny County Distributors, Inc., a Pennsylvania Corporation, or any other person found to have an interest in the property.

CIVIL DIVISION

NO. G.D. 81-27642

## ORDER

AND NOW, this 21st day of February, 1986, based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED, ADJUDGED and DECREED that the Condemnees' Preliminary Objections are DENIED.

BY THE COURT

/s/ LOUIK ..... , J.
Maurice Louik

## PRELIMINARY OBJECTIONS TO DECLARATION OF TAKING

E-V Company, a partnership composed of Emil F. Kehr and Vincent E. Malone, hereinafter called "Owner," preliminarily objects to the Declaration of Taking filed in this case and denies the power and the right of Urban Redevelopment Authority of Pittsburgh, hereafter called the "Authority," to appropriate the real property of the Owner described in the Declaration of Taking, hereafter called the "property," the sufficiency of the security, the propriety of the procedure followed by the Authority and the validity of the Declaration of Taking for the following reasons as thus far known to the Owner:

1. According to the Notice to Condemnee of Condemnation served upon Owner the Declaration of Taking was filed in this case on October 9, 1981.

2. The Declaration of Taking recites that the condemnation of the property of the Owner was approved by a resolution of the board of the Authority adopted on September 17, 1981.

3. Resolution No. 253 (1981), attached as Exhibit "A" to the Declaration of Taking, indicates that the power of eminent domain is exercised for the public purpose of carrying into effect a proposal for the redevelopment of Redevelopment Area No. 39, North Shore, which was approved by the Council of the City of Pittsburgh on May 5, 1972, almost nine and one half years prior to the filing of the Declaration of Taking.

4. The date of the certification of blight required by the Urban Redevelopment Law is unknown to the Owner but it obviously occurred prior to the action of the Council

of the City of Pittsburgh on May 5, 1972 and presumably was many months prior to that time.

5. No notice of the certification of blight by the City of Pittsburgh Planning Commission, hereafter called the "Commission," was recorded in the Office of the Recorder of Deeds where it would have been discovered by the Owner which acquired the property in 1977, following the obtaining of a title examination, which acquisition was subsequent to the certification of blight.

6. The area certified by the Commission as a blighted area and a redevelopment area was not, in fact, blighted at the time of certification nor was the property of the Owner or of any property geographically proximate to the property of the Owner or which comprised the same business community or neighborhood according to street patterns and land uses as the property of the Owner blighted at such time. Rather, the area was productive, attractive and important to the social business life of the community.

7. The area certified by the Commission as a blighted area and a redevelopment area was not, in fact, blighted nor was any part of it which is geographically proximate to the property of the Owner or which comprises the same business community or neighborhood according to street patterns and land uses as the property of the Owner blighted as of the date of the filing of the Declaration of Taking nor within a reasonable time prior thereto. Rather, the area is productive, attractive and important to the social and business life of the community.

8. Extensive rebuilding, remodeling, demolition of structures and changed land uses in the area of the property of the Owner and in the area certified as blighted has

taken place within the last nine years substantially altering and improving the character of the area.

9. The Pennsylvania Local Agency Law was enacted on December 2, 1968, effective January 1, 1969.

10. The identity of the owner of the property of the Owner and its address and the identity and address of its predecessor in title are and have been easily ascertainable from public records in the County of Allegheny and the City of Pittsburgh.

11. No notice of the certification of blight proceeding was given to the Owner or to its predecessor in title as required by due process of law and the Local Agency Law.

12. No opportunity was afforded to the Owner or its predecessor in title to be present at the certification of blight proceeding and to be heard and to state objections, notwithstanding that a certification of an area as a blighted area and a redevelopment area has a chilling and adverse affect on property ownership and use and the operation of businesses within a neighborhood certified as blighted and as a redevelopment area and notwithstanding that the following specific adverse effects follow a certification of blight and of an area as a redevelopment area in a neighborhood:

a. Real property and fixtures are no longer saleable on a free and open market

b. Real property can no longer be mortgaged or otherwise used as security for loans to finance improvements to property or as capital for business ventures

c. Business and residential tenants occupying properties within the certified area terminate or do not renew their leases and leave the area thus causing vacancies

d. Buildings within the area become unoccupied

e. Structures are boarded up

f. Structures are demolished

g. Vandalism rapidly takes place within the certified area and plumbing and hardware are stripped from buildings

h. Normal maintenance of buildings including painting diminishes or ceases

i. Trash collects

j. Deterioration of structures and of the neighborhood itself sets in rapidly

k. Normal growth and expansion of existing businesses and non-profit enterprises ceases and even the conduct of businesses and non-profit enterprises diminishes or ceases

l. Property values decrease

m. Customers and business visitors cease to come to the neighborhood and deal in the merchantile establishments and establish business relationships elsewhere

n. Some property owners settle with the prospective condemnor and convey their properties under the threat of condemnation and in lieu of condemnation

o. Owners and tenants are at the mercy of the prospective condemnor as to when their properties or businesses will be taken under its power of eminent domain.

13. The Urban Redevelopment Law violates both the federal and state constitutions, at least in the circumstances of this case, because its definition of the term blight and the criteria expressed in the statute for the determination of blight are so vague that men of common intelligence must necessarily guess at the meaning intended and differ as to the application of the statutory language, thus violating the essentials of due process of law.

14. The purported taking of the property of the Owner is void and of no effect because the Urban Redevelopment Law violates the federal and state constitutions in not providing for, or requiring, any type of meaningful notice to, or any type of hearing of, the objections of property owners and tenants and owners and operators of businesses within an area being considered by a planning commission for certification as blighted and as a redevelopment area prior to the planning commission voting to certify or not.

15. No statute of Pennsylvania provides for, or requires, any type of notice to, or any type of hearing of, objections of property owners and tenants and owners and operators of businesses within an area being considered by a planning commission for certification as blighted and as a redevelopment area prior to the planning commission voting to certify or not, all in deprivation of the rights of the owner and of other similarly situated to due process of law.

16. The Commission is a local agency within the meaning of the Pennsylvania Local Agency Law and the certification of an area as blighted and as a redevelopment area is an adjudication within the meaning of the Local Agency Law.

17. Neither the Commission nor anyone else gave meaningful notice to the Owner or to its predecessor in title of the adjudication proceeding involving the certification of the area including the property of the Owner as a blighted area and a redevelopment area or designated the Owner or its predecessor in title or others similarly situated as a party in the certification of blight proceeding or afforded the Owner or its predecessor in title or others similarly situated the rights of a party in that proceeding, including the right to be heard.

18. No record of the proceedings before the Commission at which it certified the area as a blighted area and a redevelopment area was made within the meaning and requirements of the Local Agency Law.

19. No reasons for the adjudication determining that the area was a blighted area and a redevelopment area were made and filed by the Commission.

20. No right to appeal as guaranteed by the Constitution of Pennsylvania was preserved for the Owner or its predecessor in title by the actions of the Commission.

21. No notice or opportunity to be present and to be heard and object was given to the Owner or its predecessor in title of the Commission meeting or the Authority meeting where the Redevelopment Proposal and Redevelopment Area Plan were approved or of the City Council meeting approving the Redevelopment Proposal even

though the identities and addresses of the Owner and its predecessor in title and of others similarly situated were easily ascertainable from the public records in Allegheny County and the City of Pittsburgh.

22. The City of Pittsburgh Council proceedings approving the Redevelopment Proposal were not due process hearing or administrative or quasi-judicial hearings within the meaning of the federal and state constitutions or of any state law because there was no full and complete record of the proceedings kept, there was no right to examine or cross-examine witnesses, nor to produce witnesses nor to introduce evidence and no personal notice was given to the Owner or its predecessor in title or others similarly situated of the right to be present and to be heard.

23. No pre-determination or pre-deprivation hearing has been held or provided with respect either to the certification of blight proceeding or the passage of title as of the time of the filing of the Declaration of Taking from the Owner to the Authority, all to the harm of the Owner, particularly when coupled with the previously stated policy of the law that a heavy burden is placed upon one who objects to the validitly of a taking to establish that the taking was in palpable bad faith, arbitrary and capricious or otherwise illegal.

24. The actions of the Authority and of the Commission have deprived the Owner and its predecessor in title of their right to effective judicial review of the governmental actions involved.

25. The purported taking of the property of the Owner is a denial of due process of law where it is premised upon

a certification of blight proceeding more than nine years old.

26. The studies, facts and data, if any, upon which the certification of blight proceeding, if any, were founded is stale on its face as a matter of law after the passage of more than nine years.

27. The proposed redevelopment of an area more than nine yaers after the certification of blight, if any, is selectively unfair and a denial of due process of law and the equal protection of law to the Owner.

28. Neither the Declaration of Taking nor the resolution incorporated as Exhibit "A" to it indicate that there was a certification of blight proceeding.

29. The purported taking of the property of the Owner is for the primary gain and benefit of a private entity rather than for a public purpose.

30. The result of the purported taking is to inordinately benefit a private entity or entities at the expense of the owner of the property being taken.

31. If the certification of blight determination and resolution by the Commission followed the language of the Urban Redevelopment Law, then it is impermissibly vague and lacking in the specificity necessary to establish the existence of conditions constituting such blight as would justify a certification of blight.

32. The purported taking is a wrongful use of the power of eminent domain conceived and wrought in bad faith and in an arbitrary and capricious manner for the purpose of benefiting another private entity or entities by the appropriation of the property of the Owner.

33. The Owner believes and, therefore, avers that an agreement or agreements, the substance of which are unknown to the Owner, has or have bee entered into by the Authority and another person or persons by which the Authority is to use its power of eminent domain for the private gain and benefit of the other party or parties to the agreement at the expense of the Owner of the property purported to be appropriated.

34. The Authority is acting as the agent of a private entity or entities to acquire for it or them the property of the Owner in violation of the constitution and laws of the United States and of Pennsylvania.

35. The filing of a Declaration of Taking in the Prothonotary's Office and of a plan and of a notice of condemnation in the office of Recorder of Deeds without a hearing on the certification of the area as a blighted area and a redevelopment area and without a hearing prior to the transfer of title to the Authority is in violation of the rights of the Owner guaranteed it by the constitutions and laws of the United States and of Pennsylvania.

36. The Owner believes and, therefore, avers that the members of the Commission involved in the certification of blight proceeding have not acted with the deliberate, objective and unbiased consideration and independent judgment and actions required of a public body in considering or undertaking the certification of blight procedure for this redevelopment project.

37. Neither the Commission nor any other person complied with the requirements of the Sunshine Act of Pennsylvania by giving meaningful notice to the Owner or its predecessor in title and others similarly situated which

would have afforded them an opportunity to appeal and be heard and object at the certification of blight proceedings, if any, before the Commission thereby invalidating the entire proceeding and this purported taking.

38. The Authority and the City of Pittsburgh have undertaken aids and benefits to an unknown private entity or entities scheduled to acquire from the Authority the property of the Owner in violation of due process of law and the equal protection of the law.

39. The purported taking of the property of the Owner is a taking for other than a public purpose and far in excess of the needs of the public and is beyond what the public need permits.

40. The purpose of the redevelopment project and of the condemnation is not for the replanning of a blighted area, but in order to acquire prime commercial land for development by others of the property of the Owner which property is being productively and effectively utilized.

41. The bond of the Authority, without surety, is insufficient security.

42. The Owner reserves the right to amend these preliminary objections insofar as is appropriate in connection with any information developed by discovery or at hearing.

WHEREFORE, the Owner requests that your Honorable Court declare the purported taking of the property of the Owner void and of no effect and that a revesting of title in the Owner be ordered.

/s/ THOMAS J. DEMPSEY

Thomas J. Dempsey
Attorney for Owner
820 Frick Building
Pittsburgh, PA 15219
(412) 281-2442

COMMONWALTH OF PENNSYLVANIA
COUNTY OF ALLEGHENY } SS:

Before me, the undersigned authority, personally appeared Vincent E. Malone, who, being duly sworn according to law, deposes and says that the facts contained in the foregoing preliminary objections, are true and correct to the best of his knowledge, information and belief.

/s/ VINCENT E. MALONE
Partner

SWORN TO and subscribed before me
this 13th day of November, 1981.

/s/ SHARON MOONEY
SHARON MOONEY
PITTSBURGH ALLEGHENY COUNTY
MY COMMISSION EXPIRES MAY 10, 1982
Member, Pennsylvania Association
of Notaries

## PRELIMINARY OBJECTIONS TO DECLARATION OF TAKING

Keller Office Equipment Company preliminary objects to the Declaration of Taking filed in this case on October 9, 1981, served upon it on May 13, 1982 and allegedly "reinstated" on May 11, 1982 and denies the power and the right of Urban Redevelopment Authority of Pittsburgh, hereafter called the "Authority," to appropriate the property interests, hereafter called "property," of Keller Office Equipment Company, hereafter called "Keller," the sufficiency of the security, the propriety of the procedure followed by the Authority and the validity of the Declaration of Taking for the following reasons as thus far known to Keller:

1. Service was not made upon Keller of written notice of the filing of the Declaration of Taking within the time required by Section 405 of the Eminent Domain Code.

2. There is no procedure provided by the Eminent Domain Code which establishes the exclusive procedure governing condemnations or otherwise by applicable law for reinstatement of a declaration of taking.

3. The alleged reinstatement was without notice to Keller.

4. Keller incorporates by this reference, and adopts as its own as further preliminary objections by it, the content of paragraphs 1 through 41, inclusive, of the Preliminary Objections To Declaration of Taking filed by E-V Company at G.D. 81-27642 in the Court of Common Pleas of Allegheny County, Pennsylvania, changing, however, the references therein to "Owner" to "Keller."

5. Keller believes, and therefore avers, that Mellon-Stuart Company is the entity for which the Authority seeks to use its power of eminent domain for the inordinate and illegal private gain and benefit of Mellon-Stuart Company at the expense of Keller.

6. Keller reserves the right to amend these preliminary objections insofar as is appropriate in connection with any information developed by discovery or at hearing.

WHEREFORE, Keller requests that your Honorable Court declare the purported taking of its property interest void and of no effect.

/s/ THOMAS J. DEMPSEY

Thomas J. Dempsey
Attorney for Keller Office
Equipment Company
820 Frick Building
Pittsburgh, PA 15219
(412) 281-2442

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF ALLEGHENY } SS:

Before me, the undersigned authority, personally appeared Helen M. Bleil, who, being duly sworn according to law, deposes and says that the facts contained in the foregoing preliminary objections are true and correct to the best of her knowledge, information and belief.

/s/ HELEN M. BLEIL

SWORN TO and subscribed before me
this 15th day of June, 1982.

/s/ SHARON M. WILEY
SHARON M. WILEY, NOTARY PUBLIC
PITTSBURGH, ALLEGHENY COUNTY
MY COMMISSION EXPIRES MAY 10, 1982
Member, Pennsylvania Association
of Notaries

## [REQUEST FOR]
## CONCLUSIONS OF LAW

1. The purported takings of the property of E-V Company and of the property interest of Keller Office Equipment Company are void as being arbitrary, capricious and in bad faith.

2. The condemnor failed to meet its burden of proof to show that the area in which the E-V Company property was located was a blighted area either in 1964 or 1971 or in 1981.

3. Neither the 1964 certification of blight nor the 1971 certification of blight may legally and constitutionally support the 1981 condemnation which is, therefore, void.

4. There has been an utter lack of due process of law for failure to give adequate notice of the certification of blight proceedings at meaningful times and of adequate notice of the presentation and consideration of Modification No. 2 to the Planning Commission and to City Council.

5. The condemnees and their predecessors in title have been denied an opportunity to be heard on the question of whether the area in which the subject property was located was a blighted area within the meaning of the Urban Redevelopment Law.

6. The condemnees and their predecessors in title have been denied an opportunity to examine the persons themselves, if any, who actually made physical inspections of the exterior and interiors of the properties located in the project area.

7. As the 1964 Basic Conditions Report was considered outdated and a new one prepared in 1971 so the 1971 Basic Conditions Report was outdated and a new one should have been prepared in 1980 or 1981.

8. No opportunity has been constitutionally afforded to the condemnees to challenge the validity of the taking of their property and property interests.

9. The proceedings of the Planning Commission in 1964 and in 1971 and in 1981 failed to comport with minimal due process of law requirements.

10. The Authority is estopped from proceeding with the North Shore project and the appropriation of the E-V Company property.

11. The Authority abandoned the North Shore project by official action.

12. The Authority abandoned the North Shore project by its absolute neglect of private real estate transactions taking place within the project area over a long period of time.

13. Changes of such a substantial nature occured in the project area between 1964 and 1971 and between 1971 and 1981 that a new certification of blight proceeding was required prior to the condemnation in 1981.

14. There is no provision in Pennsylvania law for a "re-certification" of blight or for a modification of a redevelopment plan.

15. The condemnees have been deprived of their constitutional rights by a shifting of the burden of proof by reason of the conduct of the Authority.

16. A certification of blight determination is an adjudication within the meaning of the Local Agency Law.

17. A certification of blight substantially and adversely affects property rights.

18. The certification of blight and recertification of blight in 1971 is void for failure to comply with the requirements of the Local Agency Law and for failure to afford due process of law and the purported condemnation is, therefore, void.

19. The proceedings of the Planning Commission and of the Authority have violated the provisions of the Sunshine Act and have deprived the condemnees of their property without due process of law.

20. Unless read in context with the Local Agency Law and unless the procedures there set forth are used, the Urban Redevelopment Law is unconstitutional as denying under the circumstance of this case an opportunity to a property owner or the owner of a property interest to challenge the validity of the taking of his property or property interest at a meaningful time in a meaningful fashion.

21. The Authority has impermissiby deprived the condemnees of their rights to rehabilitate the E-V Company building.

22. The rehabilitation policies of the Authority with respect to the E-V Company building have been selectively discriminatory and the condemnation is, therefore, void.

23. The Authority has impermissibly ignored the fact that E-V Company has rehabilitated its property itself and the Authority has wrongfully failed even to investigate the physical and economic condition of the E-V Company

structure and, within a reasonable time before the purported condemnation, the physical and environmental conditions of the other structures in the area.

24. Just compensation for the taking of property is never a full substitute for the ownership of property itself and will not be tolerated in a democracy unless the public necessity absolutely demands the appropriation.

25. There is no public necessity for the taking of the property of E-V Company.

26. There is no justification for the proposed public use of the E-V Company property or of the interest of Keller Office Equipment Company which would justify a taking by eminent domain.

27. The Authority has grossly abused its discretion in purporting to appropriate the E-V Company building and land.

28. The Urban Redevelopment Law in this instance has been grossly misused by the Authority.

29. The certifications of blight are stale as a matter of law.

30. The purported certifications of blight are void for failure to specifically detail conditions considered to have justified the certifications.

31. The vagueness of generality of the certifications of blight have precluded effective appellate review of the propriety of the certifications.

32. Service of the declaration of taking on Keller Office Equipment Company was void because not served within 30 days of the filing of the declaration of taking.

33. There is no procedure authorizing a reinstatement of a declaration of taking and the attempted reinstatement prior to service upon Keller Office Equipment Company was void particularly in light of the time period involved.

34. The Authority could not legally amend its declaration of taking.

35. The condemnes had a right to amend their preliminary objections.

36. A purported condemnation is an impermissible attempt to transfer private property from one private property owner to another selected by the Authority.

37. The Authority and the Planning Commission could easily have ascertained the ownership of the E-V Company property in 1964 and in 1971 and in 1980 or 1981 and served adequate notice upon that person by constitutional means of the certification of blight proceedings and of the proceedings relating to Modification No. 2.

38. Neither the Planning Commission nor the Authority nor the Planning Department conducted constitutionally requisite certification of blight studies.

39. The purchaser of a property located in an area certified as blighted is not bound by a certification of blight of which he has not had personal notice or at least notice of record discoverable by a title examination.

/s/ THOMAS J. DEMPSEY

Thomas J. Dempsey
Attorney for Condemnees
820 Frick Building
Pittsburgh, PA 15219
(412) 281-2442

## CONSTITUTIONAL AND STATUTORY PROVISIONS

1. Section 1 of the Fourteenth Amendment to the United States Constitution provides:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. Section 406 of the Pennsylvania Eminent Domain Code, Act of June 22, 1964, P.L. 84, 26 P.S. 1-406, relating to challenges to a condemnation provides:

> (a) Within thirty days after being served with notice of condemnation, the condemnee may file preliminary objections to the declaration of taking. The court upon cause shown may extend the time for filing preliminary objections. Preliminary objections shall be limited to and shall be the exclusive method of challenging (1) the power or right of the condemnor to appropriate the condemned property unless the same has been previously adjudicated; (2) the sufficiency of the security; (3) any other procedure followed by the condemnor; or (4) the declaration of taking. Failure to raise these matters by preliminary objections shall constitute a waiver thereof.
>
> (b) Preliminary objections shall state specifically the grounds relied upon.

(c) All preliminary objections shall be raised at one time and in one pleading. They may be inconsistent.

(d) The condemnee shall serve a copy of the preliminary objections on the condemnor within seventy-two hours after filing the same.

(e) The court shall determine promptly all preliminary objections and make such preliminary and final orders and decrees as justice shall require, including the revesting of title. If preliminary objections are finally sustained, which have the effect of finally terminating the condemnation, the condemnee shall be entitled to damages as if the condemnation had been revoked under section 408, to be assessed as therein provided. If an issue of fact is raised, the court shall take evidence by depositions or otherwise. The court may allow amendment or direct the filing of a more specific declaration of taking.

3. Section 402(a) of the Pennsylvania Eminent Domain Code, Act of June 22, 1964, P.L. 84, 26 P.S. 1-402(a), relating to the passage of title to a condemnor provides:

(a) Condemnation, under the power of condemnation given by law to a condemnor, which shall not be enlarged or diminished hereby, shall be effected only by the filing in court of a declaration of taking, with such security as may be required under Section 403(a), and thereupon the title which the condemnor acquires in the property condemned shall pass to the condemnor on the date of such filing, and the condemnor shall be entitled to possession as provided in section 407.

4. Section 9(i) of the Pennsylvania Urban Redevelopment Law, Act of May 24, 1945, P.L. 991, as amended, 36 P.S. 1709(i), granting the power to redevelopment authorities to acquire properties by eminent domain provides:

> (i) To acquire by eminent domain any real property, including improvements and fixtures for the public purposes set forth in this act, in the manner hereinafter provided, except real property located outside a redevelopment area.

5. Section 10(a) and (b) of the Pennsylvania Urban Redevelopment Law, Act of May 24, 1945, P.L. 991, as amended, 36 P.S. 1710(a) and (b), relating to the prerequisite of a certification of blight for the exercise of the power of eminent domain provides:

> (a) An Authority shall prepare a redevelopment proposal for all or part of any area certified by the planning commission to be a redevelopment area and for which the planning commission has made a redevelopment area plan.
>
> (b) The planning commission's certification of a redevelopment area shall be made in conformance with its comprehensive general plan (which may include, inter alia, a plan of major traffic arteries and terminals and a land use plan and projected population densities) for the territory under its jurisdiction or for any greater area for which the field of operation of the Authority has been extended under clause (e) of section 3 of this act.

6. Section 2(a) of the Pennsylvania Urban Redevelopment Law, Act of May 24, 1945, P.L. 991, as amended, 36 P.S. 1702(a), relating to the criteria as to which a planning

commission is to make its determination as to the existence of blight provides as follows:

> It is hereby determined and declared as a matter of legislative finding—
>
> (a) That there exist in urban communities in this Commonwealth areas which have become blighted because of the unsafe, unsanitary, inadequate or overcrowded condition of the dwellings therein, or because of inadequate planning of the area, or excessive land coverage by the buildings thereon, or the lack of proper light and air and open space, or because of the defective design and arrangement of the buildings thereon, or faulty street or lot layout, or economically or socially undesirable land uses.

7. Section 3(n) of the Pennsylvania Urban Redevelopment Law, Act of May 24, 1945, P.L. 991, as amended, 36 P.S. 1703(n), defines a "Redevelopment Area" as

> Any area, whether improved or unimproved, which a planning commission may find to be blighted because of the existence of the conditions enumerated in section two of this act so as to require redevelopment under the provisions of this act.